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ABSTRACT

This publication is a resource guide to the regulations governing the use of federal Carl D. Perkins Vocational and Applied Technology Education Act of 1990 dollars. Chapter 1 gives an overview of the audit process and the handbook. Chapter 2 covers the key elements in each section of the Perkins Act. Chapter 3 provides an overview of all legislative requirements affecting Perkins spending. Many of the legal authorities cited are included as appendixes to the handbook. Chapter 4 covers key requirements for all projects using Perkins Act basic grant funds. Chapter 5 explains the requirements for using nonbasic grant Perkins funds. Chapter 6 explains what kinds of costs are allowable, allowable with prior approval, and not allowable under Perkins. Chapter 7 offers guidance in identifying direct and indirect costs and developing cost allocation plans. Chapter 8 explains the audit process and offers help in preparing for this annual event. Chapter 9 shows how to avoid audit problems in the areas of time and effort, nonsupplementing, carry over of unexpended funds, statute of limitations, matching, and maintenance of effort. Extensive appendixes include the following: a glossary, proposed Perkins regulations, regulations regarding state-administered programs, Uniform Administrative Requirements for Grants and Agreements, General Education Provision Act--Enforcement, Department of Education Audit Requirements, key Department of Education decisions, and index. (YLB)

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AVA AUDIT HANDBOOK:

Avoiding Audit Liability Under the 1990 Perkins Act

By Michael Brustein

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FOREWORD

The American Vocational Association is committed to providing vocational-technical educators with the most accurate, comprehensive and current information possible about the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. This legislation offers major support for improving and expanding access to vocational-technical education. Under the leadership of the AVA Board of Directors, the association has been able to offer a real service to the field by keeping practitioners aware of the impact of the legislation on their programs.

In this handbook, AVA provides the third in a series of publications we have issued since the new Perkins Act became law in September 1990. The AVA Guide to the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, which was published immediately after passage of the new law, has become, we are proud to say, the standard reference in the field. This guide contains the only complete text of the law available anywhere, and its usefulness is enhanced by a title-by-title analysis of the law.

Within days of the publication of the proposed regulations for the act in fall, 1991, AVA released Regs Review. This valuable reference contains the complete text of the proposed regs plus an analysis of key concerns with the regs and AVA's position on these issues.

We are now pleased to offer the AVA Audit Handbook: Avoiding Audit Liability Under the 1990 Perkins Act as a logical extension of our series of publications. This handbook has been authored by AVA legal counsel, Michael Brustein, a nationally recognized authority on the Perkins Act. From his storehouse of knowledge about the Perkins Act — and especially its legal ramifications — he has put together a publication that meets a recognized need for every administrator who receives Perkins funds.

The AVA Audit Handbook offers in one volume the most complete resource guide ever published to all the laws and regulations governing the use of federal Perkins dollars. Written in a user-friendly style, the handbook puts extremely complex issues into very understandable terms. It will guide you from the preparation of an application for federal dollars through the final audit required to account for how these dollars were spent. The handbook is filled with practical tips for assuring that programs remain in compliance with the law as they seek to carry out the Perkins Act's mandates.

The AVA Board of Directors and the headquarters staff remain dedicated to providing information that will enable local practitioners to do their jobs better. We appreciate input from those we serve on the products we produce and on possible new products you would like to have.

Best wishes to each of you as you work to implement the Perkins Act. AVA is here to help you meet the challenge.

Charles H. Buzzell
Executive Director
American Vocational Association

CONTENTS

Foreword 1
Introduction 5
Chapter 1: Overview 7
Chapter 2: The Perkins Act of 1990 9
Chapter 3: Overview Of Federal Authorities 13
Chapter 4: Using Basic Grant Funds In Local Programs 19
Chapter 5: Using Other Perkins Funds 27
Chapter 6: Identifying Allowable Costs 31
Chapter 7: Charging Costs 35
Chapter 8: The Audit Process 39
Chapter 9: Key Audit Concerns 47
Chapter 10: Conclusion 53
Glossary 55
Appendix A: Proposed Perkins Regulations A-1
Appendix B: State-Administered Programs B-1
Appendix C: Uniform Administrative Requirements for Grants and Agreements C-1
Appendix D: General Education Provisions Act—Enforcement D-1
Appendix E: Education Department Audit Requirements E-1
Appendix F: Key Education Department Decisions F-1
Index 257

Charts

Basic State Grant By Percentage of Allocations 10
A Quick Guide to the 1990 Perkins Act 11
A Quick Guide to Federal Authorities 16
Perkins Act Expenditures 33

INTRODUCTION

Congratulations! As a local vocational educator you may have already been given the chance to spend federal money. All you have to do is decipher legal language, untangle a web of regulations, develop a prize-winning application and properly spend every cent. Then, once a year, an auditor will visit you to make sure you have lived by the rules. If that person feels you have not, he or she will generate a report taking exception to some of your spending. This report will then be considered by the U.S. Department of Education, where federal officials will decide whether your spending was OK. If not, you may have to pay back money you have already spent.

While such a scenario may make you think twice about using federal funds, these challenges are far outweighed by the rewards of tapping federal money through the latest Perkins Act. What you need is an all-in-one resource combining federal regulations, explaining key spending requirements and guiding you through the audit process. This handbook is it.

The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 is significantly different from all previous vocational education statutes and contains hundreds of **new** provisions that govern the expenditure of federal funds. In addition to the actual statute, the U.S. Department of Education has now published related regulations, which add new requirements and contain clarifications and interpretations of the act's requirements. Several additional statutes cover the expenditure of all federal funds, including Perkins grants.

In this handbook, audit-related requirements contained in the federal legislation and regulations are synthesized into one usable format. This handbook answers your questions about the permissible uses of Perkins funds, how the funds must be accounted for and, ultimately, the steps you should take to prepare for the audit, as well as strategies to use in the event auditors question your use of Perkins funds.

An Example

A simple example illustrates how much you may need this handbook. Say you want to know if it is lawful to charge the cost of a new computer to your Perkins grant. Like most vocational educators, you have neither the time nor financial resources to research hundreds of pages of federal regulations to obtain the answer. Nor do you have the patience to have your school district write to the state education department and have the state, in turn, write to the U.S. Department of Education in Washington, D.C., to get the answer. Even if you had the luxury of waiting months for an answer, can you be certain it is legally binding?

If you purchase and charge the computer to the Perkins grant, can you be confident that, when the auditor examines your books next year, the audit will not question this expenditure? And even if the expenditure is permissible, to which specific set-aside or authority of the Perkins grant should it be allocated? If the computer is charged to tech-prep rather than the basic grant, are the requirements different? May students who are not members of the five special populations groups mentioned specifically in the legislation use the computer? May non-vocational students use the computer while it sits idle in the computer lab? Does your request for the equipment need to be itemized in the local application the district submits to the state? Is it necessary for the state plan to indicate that federal funds are going to be expended for this equipment? How specific must the plan be? Who must retain the expenditure records and for how long?

This handbook offers you a guide through such statutory quagmires and helps you make the most of the opportunities presented in the Perkins Act.

CHAPTER 1

OVERVIEW

The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 is undoubtedly the most prescriptive federal education statute ever enacted. Its many requirements are designed to ensure that federal funds are used for the purposes Congress intended in creating the act.

In using Perkins funds, a participating school, institution or program is bound by far more than the Perkins statute alone. There are nine other authorities governing the expenditure of these funds. There are differences in how Perkins funds can be spent according to the law governing the expenditure.

Once these differences are understood, participants must then develop an understanding of which costs are allowable and which are not and whether these costs are direct or indirect. Finally, participants must understand the law's audit requirements. Any program receiving more than $25,000 in total federal funds must participate in an annual financial audit.

The audit requirements must be taken seriously. Failure to conduct a proper audit can result in disallowance of the audit cost, withholding of some future assistance payments until the audit is completed or, ultimately, suspension of the federal assistance agreement.

During the audit process, an independent auditor examines your records and interviews employees to determine if all federal requirements have been met. If the auditor feels you have not fulfilled all the requirements, your use of federal funds will be questioned. Ultimately, an auditor's questions can result in a U.S. Department of Education demand to repay grant monies. Clearly it makes sense to understand and comply with all requirements as you spend federal funds. This handbook is designed to help you do so.

The Audit Process

There are two types of audits used to review Perkins expenditures. An "A-128" audit is a required annual audit you initiate. A "federal" audit, which is much less common, is an audit initiated by the U.S. Department of Education's Inspector General's Office. Both types of audits are conducted in a similar manner and both have the same goal: to ensure that your federal funds are spent in accordance with the requirements of the Perkins Act.

The auditor will review:
(1) financial statements;

(2) internal controls that ensure proper resource use;

(3) compliance with laws and regulations.

The auditor needs to determine that:

- funds are used for allowable services;
- service recipients are eligible beneficiaries;
- matching requirements are met;
- "level of effort" requirements are met;
- federal funds are used to supplement, not supplant, funds from other sources.

After reviewing your records, the auditor creates a draft report. Once you review this document and submit your comments, the auditor issues a final report that should include your response to the draft report. This report is submitted to the U.S. Department of Education, which investigates the spending questioned by auditors and issues a determination of whether funds were properly used. At this point you may be obligated to repay Perkins funds or you may launch an appeal.

Using This Handbook

This handbook has been developed to provide you with the information you will need to use federal funds correctly. Each chapter addresses a key issue relating to your successful use of Perkins Act funds. Here's an overview of what you will find in each chapter.

Chapter 2: The Perkins Act of 1990

Covers the key elements in each section of the Perkins Act.

Chapter 3: Overview of Federal Authorities

Provides an overview of all legislative requirements affecting Perkins spending. Many of the legal authorities cited are included as appendices to this handbook.

Chapter 4: Using Basic Grant Funds in Local Programs

This chapter covers:

- key requirements for all projects using Perkins Act basic grant funds;
- activities for which it is permissible to use basic grant funds;
- guidelines on use of equipment purchased with basic grant funds;
- elements to be included in a local application for basic grant funds.

Chapter 5: Using Other Perkins Funds

Explains the requirements for using non-basic grant Perkins funds for:

- state programs and leadership activities including technology education and vocational student organizations;
- equity programs;
- programs for criminal offenders;
- community-based organizations;
- consumer and homemaking education;
- state-administered tech-prep programs.

Chapter 6: Identifying Allowable Costs

Explains what kinds of costs are allowable, allowable with prior approval and not allowable under Perkins. The chapter also contains details on documenting employee time.

Chapter 7: Charging Costs

Offers guidance in identifying direct and indirect costs and developing cost allocation plans.

Chapter 8: The Audit Process

Explains the audit process and offers help in preparing for this annual event.

Chapter 9: Key Audit Concerns

Shows how to avoid audit problems in the areas of:

- time and effort;
- non-supplanting;
- carryover of unexpended funds;
- statute of limitations;
- matching;
- maintenance of effort.

The chapter also describes current practices in "equitable offset" of funds that an auditor determines should be repaid.

CHAPTER 2

THE PERKINS ACT OF 1990

The Carl D. Perkins Vocational and Applied Technology Education Act of 1990 provides secondary, postsecondary and adult vocational education programs with federal assistance from July 1, 1991 - June 30, 1996.

This new legislation greatly expands the federal government's job-related education efforts. It emphasizes service to "special populations," defined in the law as individuals with handicaps, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sexual bias and individuals in correctional institutions. The method by which grants will be allocated has changed significantly. The new legislation eliminates many of the fiscal constraints found in the former act, including set-asides, matching of program costs and excess costs for the handicapped and disadvantaged.

The format of the legislation remains basically the same with all major provisions contained in five titles. The following synopsis provides a brief overview of each of the titles.

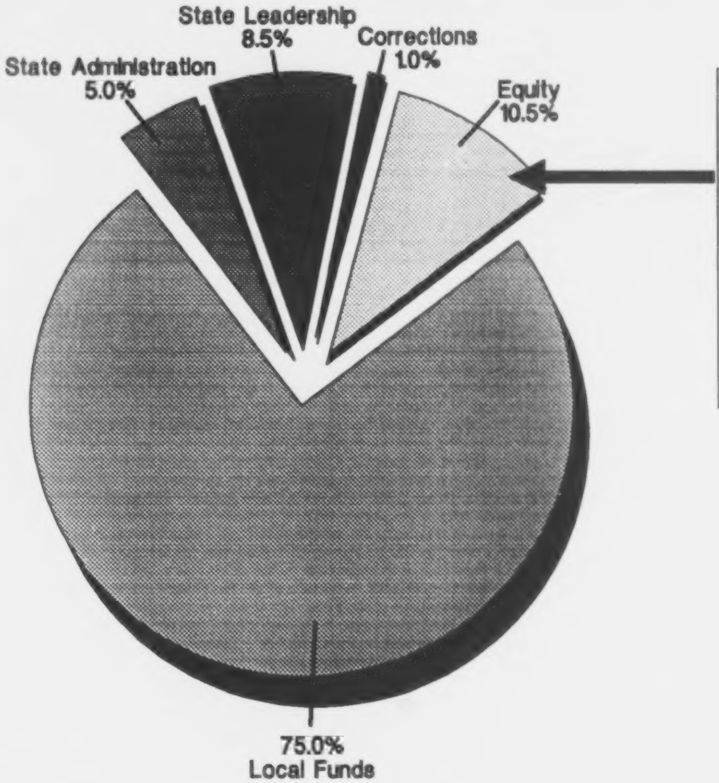
Title I—Vocational Education Assistance to the States

This title explains: the general organizational and planning responsibilities of the State Board for Vocational Education and the State Council on Vocational Education; the development of the state plan; the implementation of the state assessment; the development and use of performance standards and measures; and the equal access provisions for members of special populations.

States were required to develop an initial three-year state plan followed by a two-year plan for the remaining years covered by the legislation. Each state was required to conduct an assessment of the quality of its vocational education programs prior to developing the state plan.

The new act calls for each state receiving assistance to establish a Committee of Practitioners. This body will develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary and adult vocational education programs. The approved standards and

Basic State Grant By Percentage of Allocations



No less than 7% for single parents, displaced homemakers and single pregnant women

No less than 3% for sex equity

.5% float allowed between the two categories

measures must be implemented in the states by September 1992. Annually each recipient must evaluate the effectiveness of its programs, based on the core standards and measures of performance.

Title II—Basic State Grants for Vocational Education

Title II provides detailed information on basic state grant requirements. Seventy-five percent of all funds received by a state must be allocated to local education agencies, area vocational-technical schools and postsecondary institutions.

The formula for allocating funds to secondary school programs is as follows: 70 percent of the allocation is based on Chapter 1 funds the local education agency received, 20 percent is based on the number of students with handicaps who have individualized education programs and 10 percent is based on the number of students enrolled in school and adults enrolled in training programs.

Area vocational-technical schools are eligible to receive funds directly from the state if the schools enter into cooperative relationships with their component local districts. The area school must serve proportionately at least as many economically disadvantaged and disabled students as the component school districts. The state must establish an appeal system so that if either the local education agency or the area vocational-technical school is dissatisfied, appropriate action can be taken.

Postsecondary and adult education programs receive funding based on the proportion of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled at each institution compared with the total number of recipients in the state. This formula can be waived if the state submits to the Secretary an alternative method that ensures a more equitable distribution of funds.

Eligible recipients may use funds only for program improvement, with the full participation of special populations. Priority must be given to sites that serve the highest concentrations of special populations.

(Continued on page 12)

QUICK GUIDE TO THE 1990 PERKINS ACT

Title I— Vocational Education Assistance to the States

This section explains the general organizational and planning responsibilities at the state level, including:

- structure and role of the State Board for Vocational Education;
- structure and role of the State Council on Vocational Education;
- guidelines for developing the state's plan for using funds;
- requirements for conducting a state assessment of program quality;
- requirements to develop performance standards and measures and use them to evaluate funded projects;
- criteria for ensuring equal access for members of special populations.

Title I also describes the system for allocating Perkins funds.

Title II—Basic State Grants for Vocational Education

This section provides the framework for state and local programs. At the state level, funds are provided for:

- state leadership programs including teacher professional development, curriculum development, program evaluation, promotion of partnerships, tech-prep education support, vocational student organization support, technology education programs and data collection;
- programs to provide single parents, displaced homemakers and single pregnant women with marketable skills;
- programs to promote the elimination of sex bias;
- corrections education.

Most significantly, Title II describes the requirements for use of basic grant funds at the local level and describes the local application process. Specifically, local programs receiving Perkins funds must:

- improve the vocational education program;
- encourage full participation of special populations;
- limit the number of sites or program areas using funds;
- give priority to sites or programs serving the highest concentrations of special populations;
- be of sufficient size, scope and quality to be effective;
- integrate academic and vocational education through a coherent sequence of courses;
- provide equitable participation for special populations;
- submit a detailed local application to the state agency.

Title III—Special Programs

This section explains requirements for special programs administered through the state education agencies, including:

- vocational education support programs by community-based organizations;
- consumer and homemaking education;
- comprehensive career guidance and counseling programs;
- business-labor-education partnerships for training;
- tech-prep education;
- supplementary state grants for facilities, equipment and other program improvement activities;
- community education employment centers and vocational education Lighthouse schools;
- tribally controlled postsecondary vocational institutions.

Title IV—National Programs

This section contains the authority for national programs administered directly by the U.S. Secretary of Education, including:

- research and development;
- demonstration programs;
- the vocational education and occupational information data system;
- bilingual vocational training programs.

Title V—General Provisions

This section contains general administrative provisions and definitions of terms used in the act. The provisions include:

- maintenance of effort requirements;
- reporting requirements;
- compliance with laws guaranteeing civil rights;
- student assistance requirements;
- requirements for federal monitoring of state and local projects;
- joint funding requirements;
- the requirement that Perkins funds supplement, not supplant, other funding;
- identification of state-imposed requirements;
- administrative cost matching requirements.

Title VI—Miscellaneous Provisions

This section amends legislation other than the Perkins Act.

Title VII—Effective Date

This section establishes the effective date of the legislation as July 1, 1991.

Of the 25 percent of the basic grant retained by the states, equity programs receive 10.5 percent of the funds. Seven percent of these funds must be used for programs serving single parents, displaced homemakers and single pregnant women, and no less than 3 percent of these funds are to be used for sex equity programs. The remaining .5 percent may be used for either of the two categories.

The act authorizes each state to use 8.5 percent of its Basic State Grant for state leadership activities and 5 percent for administrative activities. The funds for administrative activities must be matched by the state on a dollar-for-dollar basis. The remaining 1 percent is to be used for vocational programs in correctional institutions.

Chapter 4 of this handbook explores in depth the use of basic grant funds.

Title III—Special Programs

Title III explains the requirements for the nine special vocational programs that are administered through the state education agencies: community-based organizations, consumer and homemaking education, comprehensive career guidance and counseling programs, business-labor-education partnerships, tech-prep education, facilities improvement and equipment acquisition, community education employment centers, Lighthouse schools and tribally controlled postsecondary vocational institutions.

Provisions for community-based organizations, consumer and homemaking education and comprehensive career guidance and counseling programs remain relatively unchanged from previous legislation.

Business-labor-education partnerships are authorized for funding apprenticeships, new equipment, cash contributions to programs, teacher internships and training and bringing representatives of business and organized labor into the classroom. Priority must be given to partnerships providing job training in areas of significant labor shortages. The Secretary of Education is required to provide a policy manual describing the policies and offering examples of allowable expenses under this program.

A new tech-prep education program is funded under Title III. The purpose of this program is to provide planning and demonstration grants to consortia of local education agencies and postsecondary education institutions for the development and operation of four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or two-year certificate. Emphasis is placed on providing equal access to special populations, including preparatory programs as needed.

Facilities improvement and equipment acquisition is a new program designed to provide funding to enable local education agencies in economically depressed areas to improve facilities and acquire or lease equipment. The funds will be used for grants to states and local education agencies and shall be distributed according to section 1006 of the Elementary and Secondary Education Act of 1965.

A new demonstration program for community education employment centers is created to establish and evaluate model high school community education employment centers. The purpose of these centers will be to meet the education needs of low-income urban and rural youth, including support services and enrichment to ensure graduation from secondary school and successful transition from secondary schools to postsecondary education or employment, including military service.

Funding for this program is combined with the Lighthouse schools project, which supports grants to secondary and area vocational schools to establish and operate model programs.

Support for tribally controlled postsecondary vocational institutions is targeted for assisting in the operation and improvement of these institutions and for expanding education opportunities for Native American students.

Title IV—National Programs

Title IV contains the authority for the national programs that are administered directly by the Secretary of Education, including research and development, demonstration programs, vocational education and occupational information data system and the bilingual vocational training programs.

Title V—General Provisions

Title V contains general administrative provisions including maintenance of effort, reporting requirements, laws guaranteeing civil rights, student assistance requirements, federal monitoring, joint funding requirements, identification of state-imposed requirements, matching administrative costs and non-supplanting. This title also includes the statutory definitions.

CHAPTER 3

OVERVIEW OF FEDERAL AUTHORITIES

Satisfying all requirements for appropriate Perkins spending is not simple. No less than nine legal authorities in addition to the Act itself govern the expenditure of Perkins dollars. This chapter offers a brief overview of these authorities. Later chapters discuss in greater depth how these authorities relate to complying sucessfully with areas that will be examined in the annual audit. The entire texts of several important authorities are included as appendices to the handbook.

1. The General Education Provisions Act (GEPA)

The General Education Provisions Act (GEPA) was enacted by Congress in 1968 to consolidate the general administrative requirements governing the multitude of education programs administered by the U.S. Education Department. Congress desired to use this one statutory vehicle rather than repeating the same administrative requirements in the separate education program statutes as had been done prior to 1968. GEPA applies to all "applicable programs." An applicable program is generally one in which an official of the Education Department, such as the Secretary of Education, has some statutory administrative responsibility. Of course, the Perkins Act is such an "applicable program."

Since 1968, GEPA has been amended numerous times. The statute includes requirements pertaining to federal control of paperwork, the delegation of responsibilities from the Secretary to others within the U.S. Education Department, the requirements for states to furnish reports and information on Perkins directly to the U.S. Education Department and fiscal provisions relating to the carryover of funds.

Section 412 of GEPA (The Tydings Amendment) authorizes state and local recipients of Perkins funds to carry unexpended funds forward to the succeeding fiscal year. The Education Department has interpreted the Tydings Amendment to permit recipients a total of 27 months to obligate Perkins funds.

Other requirements covered in this legislation include: the contingent extension of programs in the event that the Perkins authorization lapses prior to the reauthorization of the law in 1995, the general audit responsibilities of the Comptroller General, the Secretary's authority to collect and disseminate information to state and local agencies, the authority of the Secretary to provide technical assistance to state and local agencies and the Secretary's authority to make adjustments to funding allocations to states in the event a state turns down its allocation.

In addition, GEPA sets forth important procedural rules for the promulgation of federal regulations governing Perkins. It describes state agencies' monitoring responsibilities of local recipients, the privacy provisions for vocational students and parents of students under The Family Educational Rights and Privacy Act and, significantly, the enforcement provisions of the Office of Administrative Law Judges (OALJ). The OALJ handles the litigation that arises if audit exceptions of Perkins funds are sustained by the Assistant Secretary.

2. The Civil Rights Acts

Every recipient of federal financial assistance under the Perkins Act must comply with the provisions of the four anti-discrimination statutes: Title VI of the Civil Rights Act of 1964 (governing race, color and national origin discrimination), Title IX of the Education Amendments of 1972 (governing sex discrimination), Section 504 of the Rehabilitation Act of 1973 (governing disability discrimination), and the Age Discrimination Act of 1975. Each of these Civil Rights Acts has attendant substantive and procedural regulations set forth in Volume One of Title 34 of the Code of Federal Regulations (CFR).

3. Guidelines for Eliminating Discrimination and Denial of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs

In accordance with a 1977 consent decree in a major civil rights lawsuit, the Education Department's Office of Civil Rights (OCR) in 1979 promulgated specific guidelines to be used by state agencies to eliminate discrimination in vocational education programs. These guidelines, which are published at 34 CFR Part 100, Appendix B, require each state education agency to implement "methods of administration" under which state agency personnel conduct compliance reviews of local recipients of federal vocational education funds to ensure compliance with the four anti-discrimination statutes. The OCR Guidelines require state agencies to collect and analyze civil rights related data and information, carry out on-site compliance reviews and periodically report the results to OCR.

4. Vocational Education Regulations

The U.S. Education Department promulgated a Notice of Proposed Rulemaking (NPRM) on October 11, 1991, at 56 Federal Register 51448. These proposed regulations implement all the separate parts of the Perkins Act and are located at 34 CFR Parts 400 through 428. These regulations are included as Appendix A and are discussed throughout this handbook. Specific attention is paid to the General Provisions, Part 400; State Vocational Applied Technology Education Programs, Part 403; and State Administered Tech-Prep Education Programs, Part 406.

5. Education Department General Administrative Regulations (EDGAR)

The Department's General Administrative Regulations for the Perkins Basic Grant Programs are set forth at 34 CFR Part 76 (Appendix B). These EDGAR regulations provide guidance as to how a state applies to the Department for a grant, how local recipients apply to the state for sub-grants, the conditions which must be met by the state and its sub-grantees, the administrative responsibilities of the state and its sub-grantees and the procedures used by the Secretary to secure compliance with these administrative regulations. EDGAR also contains the general administrative regulations for all of the Perkins Act discretionary programs administered by the Secretary. These EDGAR regulations are set forth at 34 CFR Part 75. To the extent that the EDGAR regulations are inconsistent with the Perkins statute or regulations, the specific program statute and regulations control.

6. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

These regulations at 34 CFR Part 80 (Appendix C) establish additional uniform administrative rules for all federal grants, cooperative agreements and subawards to state, local and Indian tribal governments. These rules are based on OMB Circular A-102 and govern expenditures under the Perkins programs. Part 80 describes pre-award requirements, post-award requirements pertaining to financial administration (matching, standards for financial management, etc.), rules pertaining to the acquisition, transfer and sale of real property, equipment, supplies, copyrights, procurement in sub-grants, administrative requirements pertaining to reports, records and periods of retention, and after-grant requirements pertaining to close-out of grants. Recipients are required to retain records for a period of five years from the close of the fiscal period. If the expenditure is made on March 1, 1992, the record of that obligation should be retained until June 30, 1997. Of course, if an audit questions the expenditure, the record must be retained until the audit is resolved. Particular attention should be paid to these Part 80 rules on the purchase and transfer of equipment and supplies, which are explained in detail in Chapter 4.

7. Enforcement Regulations

The 34 CFR Part 81 regulations (Appendix D) describe the GEPA requirements governing the enforcement procedures used by the Secretary. These regulations cover audit resolution procedures and appeal rights to recipients before the Office of Administrative Law Judges. The regulations also describe the procedures recipients must use to obtain binding guidance from the Department. These areas are described in Chapter 8.

8. Principles For Determining Costs Applicable to Grants and Contracts With State and Local Governments

OMB Circular A-87 provides very important guidance to recipients of Perkins funds on allowable costs. Specifically, this circular describes allowable costs, unallowable costs and costs that are allowable only with the approval of the U.S. Education Department. This circular sets out the requirements pertaining to direct costs, indirect costs and cost allocation plans. These requirements are explained in detail in Chapter 6.

9. Single Audit Act

OMB Circular A-128 (Appendix E) implements the Single Audit Act. This circular sets forth the requirements that all recipients of federal funds must follow with regard to annual audits of federal expenditures and is described in detail in Chapter 8.

A QUICK GUIDE TO FEDERAL AUTHORITIES

Name of Authority	Commonly Called	Key Components	See
Carl D. Perkins Vocational and Applied Technology Education Act of 1990	Perkins Act	Authorization of federal funding for vocational programs, activities and services. The statute is divided into five principal titles.	Chapter 2
Notice of Proposed Rule Making (October 1991)	Perkins Act Regulations	Guidelines for implementing all parts of the Perkins Act.	Appendix A
General Education Provisions Act	GEPA	General requirements governing programs administered by the U.S. Department of Education, including: • privacy provisions for students and their parents; • requirements for states to furnish reports and information to USDE; • state agencies' monitoring responsibilities; • fiscal provisions relating to the carryover of funds; • authority for the U.S. Secretary of Education to delegate responsibilities to others within USDE, collect and disseminate information and provide technical assistance; • extension of programs in the event an act's authorization lapses (Perkins Act is scheduled for reauthorization in 1995); • general audit responsibilities of the Comptroller General; • enforcement authority of the Office of Administrative Law Judges, which handles litigation related to audit exceptions.	Chapter 3
Civil Rights Acts		Title VI of the Civil Rights Act of 1964 governs race, color and national origin discrimination. Title IX of the Education Amendments of 1972 governs sex discrimination. Section 504 of the Rehabilitation Act of 1973 governs disability discrimination. The Age Discrimination Act of 1975 governs age discrimination.	Chapter 3

Name of Authority	Commonly Called	Key Components	See
Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs	OCR Guidelines	Guidelines used to eliminate discrimination in vocational education programs. These require each state education agency to: • implement "methods of administration" under which state agency personnel review local recipients' compliance with the four anti-discrimination statutes; • collect and analyze civil rights-related data and information; • carry out on-site compliance reviews; • periodically report results to the USDE Office of Civil Rights.	Chapter 3
Education Department General Administrative Regulations	EDGAR	Guidelines on: • how a state applies for a grant; • how local recipients apply to the state for sub-grants; • conditions that must be met by the state and its sub-grantees; • administrative responsibilities of the state and its sub-grantees; • procedures used by the U.S. Secretary of Education to secure compliance.	Appendix B
Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	A-102	Administrative rules for all federal grants, cooperative agreements and sub-awards to state, local and Indian tribal governments, including: • pre-award requirements; • post-award requirements pertaining to financial administration (matching, standards for financial management, etc.); • rules pertaining to the acquisition, transfer and sale of real property, equipment and supplies; • copyrights; • procurement in subgrants; • administrative requirements pertaining to reports, records and periods of retention; • after-grant requirements pertaining to grant close-out.	Appendix C

Name of Authority	Commonly Called	Key Components	See
General Education Provisions Act Enforcement Regulations	OALJ Regs	Enforcement procedures used by the U.S. Secretary of Education, including: • audit resolution procedures; • recipients' appeal rights before the Office of Administrative Law Judges; • procedures recipients must use to obtain binding guidance from the U.S. Department of Education.	Appendix D and Chapter 8
Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments	OMB Circular A-87	Descriptions of: • allowable costs; • costs not allowed; • costs allowable only with U.S. Department of Education approval; • direct costs; • indirect costs; • cost allocation plans.	Chapters 6 and 7
Single Audit Act	OMB Circular A-128	Requirements regarding annual audits of federal expenditures.	Appendix E and Chapter 8 and 9

CHAPTER 4

USING BASIC GRANT FUNDS IN LOCAL PROGRAMS

As a local vocational educator, you are likely to seek funds through the Perkins basic grant, the primary funding source for local programs. You must satisfy many requirements to qualify for the funds and to ensure a successful audit. This chapter offers a map through the statutory maze of Section 235, the portion of the Perkins Act that specifies how basic grant funds may be spent.

The first three paragraphs of Section 235 define key eligibility requirements. You might think of these as gates, and you must pass through the first gate before passing through the second and on to the third. Once through the third gate, you gain flexibility in spending Perkins funds.

Gate 1

program improvement

special populations participation

limited sites or program areas

Gate 1: Section 235(a)

Subparagraph (a) of Section 235 imposes three requirements. First, Perkins funds must be used to **improve** vocational education programs; second, the funds must be used in vocational education programs with the **full participation** of individuals who are **members of special populations;** and third, the funds must be used either at a **limited number of sites or** in a **limited number of program areas.**

Program Improvement

The meaning of the phrase "improve vocational education programs" is not defined in the regulations, but it is clear you may not use federal funds to maintain the status quo.

You would not be authorized to use the funds to pay instructors' salaries to provide the same programs year after year. For example, federal funds could not be used to subsidize the costs of an automobile mechanics program if the program offers the identical curriculum offered in previous years. On the other hand, it would be permissible to use funds to modify the curriculum, update the curriculum or develop a totally new curriculum for auto mechanics.

In our view, useful guidance for defining program improvement may be obtained from the former Perkins Act regulations (401.591(c)). This regulation stipulates that any vocational education project, service or activity not offered by the recipient during the instructional term preceding funding under this program may be considered a new, expanded, improved, modernized or developed project, service or activity and may be considered so for up to three years. An improved program, then, is eligible for three years of funding—the year of its inception and the two following years.

Full Participation of Special Populations

The following terms are defined in the proposed regulations:

"Special populations" means "individuals with handicaps, educationally and economically disadvantaged individuals (including foster children), individuals with limited English proficiency, individuals who participate in programs designed to eliminate sex bias and individuals in correctional institutions."

"Full participation" means "providing the supplementary and other services necessary for them [special populations] to succeed in vocational education."

"Supplementary services" means "curriculum modification, equipment modification, classroom modification, supportive personnel and instructional aids and devices."

The term "and other services necessary," however, is not defined in the statute or regulations. Discussion between federal officials and lawmakers suggests, however, that the term would include services "related" to supplementary services, but not stipends, transportation, day care or preparatory services. Additional guidance on this issue is promised by the Education Department in the final regulations.

To satisfy the requirement for full participation of special populations, you must provide the supplementary and other services necessary for all five categories of special populations to succeed in the vocational education program. You do not have the option, for example, to serve only the disabled or the economically disadvantaged or individuals with limited English proficiency (LEP) and be deemed in compliance. In fact, during an audit review the auditors are quite likely to determine whether all five special population groups were served.

Common Questions

On the basis of the regulatory interpretation of Section 235(a), recipients of funds may have a host of questions. Here are some of the most common and what we believe to be the answers:

"What if one or more of the special population groups is not enrolled or intending to enroll in the vocational program?"

Common sense dictates you would not have to provide supplementary services to individuals who do not participate in the funded project. Therefore, if there are no LEP students, for example, participating in the project, the regulation would not require you to offer such services.

"What about the requirement to serve individuals in correctional institutions if the local educational agency or postsecondary institution offers no programs to such individuals?"

Again, common sense indicates that recipients with no existing arrangements for providing vocational education services to correctional institution inmates would not be required to offer such supplementary services.

"What about individuals who participate in projects designed to eliminate sex bias? How can I know when to include such an individual as a special population member?"

We find no guidance on this point in either the statute or the regulations. We suggest, therefore, that either you or the state education agency adopt your own standards or benchmarks. For example, you might determine that if the enrollment in a particular vocational project demonstrates that less than 20 percent of the students are of a particular gender, individuals in that minority could be properly deemed as participating in a project designed to eliminate sex bias. It is important, for audit purposes, to maintain on file the standards used to determine which individuals are participating in programs designed to eliminate sex bias.

"What if the federal funds are insufficient to provide these supplementary and other services for all five special population groups?"

You are not required by Perkins to use non-federal funds to satisfy the requirement for full participation and provision of supplementary services to these populations. (Other statutes, however, may require the provision of such services.)

"May I use Perkins funds to serve non-special population students in vocational education programs if all special population students have not been provided with such supplementary services?"

This raises one of the most difficult issues. You must provide supplementary and other services to special populations to the extent funds are available. Then, one may reasonably infer, if additional funds remain, you may use those funds to serve students who are not members of special populations. If insufficient funds are available to serve all special populations seeking to participate in the activities funded with Perkins dollars, the regulations would seem to preclude individuals who are not special population members from receiving any direct benefit from the Perkins dollars.

This regulatory language may cause considerable consternation in the field. It is important to note that federal officials have been less than clear on this point. While we believe a reasonable interpretation of the requirement would deter the recipient from serving non-special populations until all special populations are assured "full participation" in the funded activity, federal officials orally refuse to affirm this view. They insist that the Perkins Act is a program improvement statute for all persons and that special populations will benefit if the programs are improved, particularly if only a few programs are funded. They have not stated explicitly that the special populations must be served first.

Extreme caution is advised here. The safest road to follow is to assure that all special populations have been served before serving non-special populations with Perkins funds. Audit findings will be based on the codified regulations, not oral statements from a federal official that the auditor never heard.

Limited Sites/Programs

The third element of Section 235(a) requires that federal funds be used at a limited number of sites or with respect to a limited number of program areas. First we need to define the terms. A **site** may be construed as a building site, school site, campus site or any other place where a program is offered. **Program areas** are defined as the traditional vocational disciplines including technology, marketing, agriculture, business, health, home economics, technical and trades. **Program** is the recipient's entire vocational system, whether funded with federal or non-federal funds. **Project** is a federally funded activity.

To comply with this requirement, you need to first determine the universe of program areas and sites that offer vocational education. Once this universe is identified, decide whether to use the federal funds at either fewer sites than the total universe of sites or fewer programs than the total universe of program areas. For example, if in the past you offered courses in each program area and opted to limit the number of program areas instead of sites, it would not be permissible to use Perkins dollars in each program area.

You have the option of choosing sites or program areas. If, however, your program offers vocational education at only one site, you have no choice but to prioritize on the basis of program areas.

A local educational agency offering services in secondary schools, however, must also consider the "comparability" requirements in 34 CFR 403.194. In brief, the LEA is not permitted to award Perkins funds to a secondary school or site unless the services offered at that school or site with non-federal funds are at least comparable to the services offered at non-Perkins funded schools or sites. If the LEA decides under section 235(a) to limit programs areas instead of sites, then the services at each school or site should be substantially comparable. If the LEA has only one site, then the comparability requirements do not apply. Comparability may be satisfied either through expenditures or students-per-staff ratio. LEA administrators should carefully review the regulatory examples at 34 CFR 403.194.

Gate 2

concentration of special populations

Gate 2: Section 235(b)

Subparagraph (b) of Section 235 requires you to give priority for assistance to sites or program areas that serve the highest concentration or percentages of individuals who are members of special populations. Again, the choice between sites and program areas is yours.

To provide some guidance in this area (although not to define all possible options), the regulations include three illustrations of the meaning of "priority."

Illustration 1: Sites. The first illustration suggests a recipient rank each site based on the percentage of the site's total enrollment of students who are members of special populations, then establish a funding cut-off point below which sites will not receive any assistance. (Federal officials have stated orally that recipients may use actual numbers of students as a substitute for percentages.)

Illustration 2: Program Areas. The second illustration suggests a postsecondary institution rank each program area based on the percentage of the program area's total enrollment of students who are special population members, then not fund any program area ranked below the cut-off point established by the institution.

Illustration 3: Funding to Improve Participation. The third illustration is of particular significance since it would permit a recipient to fund a program area or site with a **lower** concentration of special populations if the purpose of funding the site or program area is to improve the participation rate of special populations. This illustration seems to attempt to resolve the tension between Perkins Act mandates to serve special populations and to fund program areas with high occupational demand. There is little merit in funding projects with high concentrations of special populations but for which very few jobs are available. Since the act contains no provisions that support this illustration, its legal sufficiency is not beyond doubt. If you nonetheless decide to fund program areas or sites with lower percentages of special populations, it is advisable to maintain a clear paper trail that demonstrates the purpose of funding that site or program area was to increase the percentage of special populations. Moreover, the Assistant Secretary has stated the project must demonstrate an enhanced rate of special population participation. Unless documentation shows increased participation, you will likely face audit difficulties.

Funding All Priorities

The U.S. Department of Education's Office of General Counsel has in the past advised that, given sufficient funding, there would be no prohibition to funding all applicants, as long as funding is undertaken in order of their precedence on the priority list.

For example, a postsecondary institution offering vocational education in four different program areas may decide to fund only a few projects in the program area with the highest concentration of special populations and gradually choose projects and activities from other program areas in rank order on the priority list. Nothing would prohibit this institution, assuming federal funding is available, to ultimately fund a project that is last on the priority list.

In other words, we read nothing in the statute or the regulations requiring an institution to fund every vocational project or activity that falls within the first priority site or program area. You may fund as many or as few activities at each priority level as you deem necessary.

Gate 3

size, scope and quality

integration of academic and vocational education

equitable participation

Gate 3: Section 235(c)(1)

Section 235(c) contains three elements that also must be factored into the equation on the use of local funds. First, funds may only be used to provide vocational education in projects of sufficient **size, scope and quality** to be effective. Second, the funded project must **integrate academic and vocational education** in such projects **through a coherent sequence of courses** so students achieve both academic and occupational competencies. Third, funded projects must provide **equitable participation for special populations** consistent with the assurances and requirements in Title I, section 118 of the act.

Size, Scope and Quality

Unfortunately, the regulations provide no guidance on the meaning of "size, scope and quality." This becomes a judgment call, and your judgment may be questioned by the auditors. In the absence of any qualitative or quantitative benchmarks, we recommend you set forth in the local application a detailed description of the funded activity. The description should be drafted so it responds to the three elements of sufficient size, scope and quality. If an auditor raises questions, you could satisfy the burden of proof by demonstrating that these ingredients were clearly set forth in the project application approved by the state education agency.

Coherent Sequence of Courses

With the enactment of the new Perkins law, the definition of "vocational education" was dramatically changed. "Vocational education" is now defined as programs that must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, problem-solving skills, work attitudes and general employability skills. The very definition of vocational education requires that any federally funded project include, at a minimum, competencies in higher-order reasoning and problem-solving skills. While many vocational education programs have already successfully combined academic and vocational competencies, you must be especially sensitive to this fact in the future. There is no doubt auditors may target this issue.

Any project that receives Perkins federal assistance must also satisfy the requirements for a "coherent sequence of courses." The regulations define "coherent sequence of courses" as a series of courses integrating vocational and academic education and directly relating and leading to both academic and occupational competencies. This includes competency-based education, academic education and adult training or retraining.

Thus, a one-time, quick-start-up training program that is not part of a coherent sequence normally would not be eligible for federal assistance. One important exception: If such a quick-start-up program is designed for adult retraining, it may be funded. For example, if a district experiences the loss of a particular industrial base, it would be permissible to use Perkins funds to offer a quick-start-up program to train the dislocated workers in another program area.

Equitable Participation
- entry assistance
- integrated setting
- supplementary services
- guidance, counseling and career development
- transition to employment
- information

Equitable Participation

Perkins funds must provide equitable participation for special populations. Although the regulations do not define "equitable participation," particular attention must be paid to the requirements in Title I of the act. It lists five assurances that must be met. Funded projects must:

(1) assist students who are members of special populations to enter vocational education programs and, with respect to students with disabilities, assist them in fulfilling the transitional service requirements of the Individuals with Disabilities Education Act;

(2) assess the special needs of students participating in projects receiving assistance under the Perkins Act with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) provide supplementary services to students who are members of special populations;

(4) provide guidance, counseling and career development activities conducted by professionally trained counselors and teachers;

(5) provide counseling and instructional services designed to facilitate the transition from school to post school employment and career opportunities.

The fact that you include these five assurances in the local application will not fully satisfy the requirements for equitable participation. You must adequately document compliance.

You also must comply with informational requirements. Each local educational agency (LEA) that receives funds under Title II must provide to special population students and their parents information concerning opportunities in vocational education, requirements for enrollment eligibility, special courses available, special services available, employment opportunities and placement information. If the LEA transfers its Perkins funding allocation to an area vocational-technical school, however, these informational requirements would be transferred to that school.

This information must be provided at least one year before students enter or are of appropriate age for the grade level in which vocational programs are first generally available in the state, but in no case later than the beginning of the ninth grade. Postsecondary institutions must provide this information to each individual who requests it or seeks admission to its vocational program.

You are **not** required to use non-federal funds to pay for fulfilling the informational requirements, providing supplementary and other services necessary for the full participation of special population members, ensuring equitable participation of special population members or meeting equal access criteria for special populations.

A major question for vocational educators has been whether the act requires them to provide supplementary services to special population members in every aspect of the vocational program, or only to those special population members participating in the federally funded activity.

The preamble to the Perkins regulations explains that the recipient need provide supplementary and other services only to members of special populations **enrolled in** projects, services and activities funded under the Act and then only to the extent possible from funds received under the Perkins Act.

On to Flexible Spending

Once the three gates have been passed through—the requirements of Sections 235(a), (b) and (c) satisfied—you have considerable latitude in the use of Perkins funds. The broad laundry list of permissible activities includes:

- Curriculum upgrades;
- Equipment purchases, including instructional aids;
- Training for both vocational instructors and academic instructors working with vocational education students in how to integrate academic and vocational education;
- Guidance and counseling;
- Remedial courses;
- Adaptation of equipment;
- Tech-prep education programs;
- Supplementary services designed to meet the needs of special populations;
- Special populations coordinators;
- Apprenticeship programs;
- Programs strongly tied to the state's economic development efforts;
- Programs that train adults and students for all aspects of occupations in which job openings are projected or available;
- Comprehensive mentor programs at institutions of higher education offering comprehensive programs in teacher preparation;
- Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations and joint labor/management apprenticeship programs.

Use of Section 235 Equipment

The purchase of equipment and instructional aids, as well as adaptation of equipment, are allowable expenditures that require special attention. Section 235(c)(3) stipulates that when equipment purchased for the secondary, postsecondary or adult program is not being used to carry out Perkins-funded activities, the equipment may be used for other, unrelated instructional purposes only if the acquisition of the equipment was **reasonable and necessary** for the purpose of conducting a properly designed project; the equipment is used **after regular school hours** or on weekends; and such other use is **incidental** to the primary use of the equipment for the Perkins activity, **does not interfere** with the Perkins use and **does not add to the costs** of using it for Perkins purposes.

Permissible Unrelated Use of Basic Grant Equipment

- after school hours
- incidental
- no interference
- no additional cost

It helps to divide these new restrictions on the use of funds for equipment purchase into three categories, as follows:

Use of the equipment by students participating in Section 235-funded activities: Neither the statute nor the regulations impose any limitation on use of the equipment by students participating in a Section 235 activity. This assumes, of course, you have complied with all Section 235(a), (b) and (c) requirements. Full participation by special populations may require modifications to the equipment. Additionally, special populations always must be afforded equal access to the equipment.

Use of the equipment by students participating in the vocational education program but not funded under Section 235: Equipment may be used for unrelated vocational education purposes if the acquisition of the equipment was initially reasonable and necessary for conducting a properly designed Section 235 project. Thus, as long as the equipment purchase was justifiable in the first instance for use under Section 235, it would be permissible to allow other vocational students to use this equipment. However, it is not permissible to purchase the equipment with Section 235 funds when your actual purpose is to allow the broader vocational education student body to use it.

Use of equipment by students participating in non-vocational education programs: The radically new requirements on shared use of equipment for non-vocational activities make it exceedingly difficult for non-vocational students to benefit from the equipment. Specifically, the statute and regulations prohibit any use of the equipment for non-vocational purposes during regular school hours. The equipment would be available for non-vocational use only after regular school hours or on weekends. This particularly limits non-vocational use at postsecondary institutions, which often conduct regular hours late into the evening.

Use of Other Perkins Equipment

These new equipment restrictions apply only to equipment purchased with funds available under the basic grant and purchased after July 1, 1991. If the equipment is purchased with funds available under one of the state programs (such as corrections, equity or state-funded technology programs) or the Title III tech-prep program, the restrictions in Section 235 would not apply. Chapter 5 discusses the use of these other Perkins funds.

The guidelines governing the shared use of equipment purchased under other parts of the Perkins Act are found in Appendix C. These regulations require you to make equipment available for use by other projects or programs currently or previously supported by the federal government, provided such use will not interfere with work on the projects or programs for which the equipment was acquired. First preference for other use must be given to other programs or projects supported by the U.S. Department of Education.

Accordingly, equipment purchased with funds other than basic grant funds (such as tech-prep funds) may be used by non-vocational education participants on a shared-use basis as long as this use complies with the requirements in the preceding paragraph. This does not limit the shared use to after regular school hours or weekends.

Equipment Management and Disposal

Local secondary schools, area vocational-technical schools and postsecondary institutions must follow the specific federal requirements regarding the use, management and disposal of equipment acquired under a federal grant. These requirements, found in section 80.32 of this handbook's Appendix C, impose new procedures for equipment management, including:

(1) maintenance of property and equipment records;

(2) physical inventory taken every two years and reconciled with the records;

(3) a system to ensure against loss, damage or theft;

(4) maintenance procedures;

(5) proper sales procedures to ensure the highest possible return on equipment sold.

Federal procedures also govern the disposition of equipment no longer needed for the original grant-supported project or program. Equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to USDE. Items of equipment with a current per-unit fair market value in excess of $5,000 may be retained or sold, and USDE shall have a right to an amount calculated by multiplying the current market value or proceeds from the sale by the federal share of the equipment.

The importance of these requirements cannot be overstated. Failure to comply with the rules pertaining to property maintenance records, for example, will generate audit exceptions. Don't rely on only the Perkins regulations pertaining to equipment. You must understand the entire interplay of competing regulations on equipment purchase. Studying section 80.32 in Appendix C will help you properly manage equipment purchased with Perkins dollars.

Preparing Your Local Application

The Perkins Act and regulations require eligible recipients to develop detailed local applications explaining how basic grant funds will be spent and why they will be spent in the proposed manner. Your local application creates a binding contractual relationship with the state.

The new application requirements are far more substantive than any prior vocational statute. The significance of this comprehensive local plan cannot be overstated. Auditors invariably will examine the local plan to ensure it contains all 31 required elements. If federal funds are not spent in accordance with your local plan, expect audit difficulties.

The following checklist enumerates elements that must be included in the local application. The local plan must:

(1) cover the same period as the state plan;

(2) contain, for each year covered in the plan, a description of the vocational education program(s)/project(s) to be funded;

(3) indicate with some precision how you will comply with the statutory requirements in Section 235(a), (b) and (c)

(4) describe how the basic grant funds will be used to improve the program or project;

(5) explain how the needs of special population members will be assessed and how the funds available under Perkins will be used to meet those needs;

(6) describe how affirmative outreach, recruitment efforts and other means of access will be provided to students who are economically disadvantaged, students with disabilities and students of limited English proficiency;

(7) set forth any local modifications to the state's evaluation performance standards;

(8) describe the methods you intend to use to coordinate vocational programs with relevant programs conducted under the Job Training Partnership Act;

(9) describe the methods you will use to consult with parents and students of special populations in the development of vocational programs;

(10) describe the coordination between your agency and community-based organizations;

(11) describe the linkage between the program(s)/project(s) you intend to fund with Perkins dollars and those program(s)/project(s) with demonstrated occupational need;

(12) describe how the program(s)/project(s) integrate academic and occupational disciplines so students are able to achieve both academic and occupational competence;

(13) describe how each funded activity is part of a coherent sequence of courses leading to a job skill;

(14) describe how you intend to monitor the provision of vocational education program services and activities to members of special populations;

(15) assure that all program(s)/project(s) carried out at secondary schools, postsecondary institutions or area vocational-technical schools will comply with the requirements regarding special populations;

(16) assure that the vocational program, through counseling, encourages students to pursue coherent sequences of courses;

(17) assure that the program(s)/ project(s) will assist students who are economically disadvantaged, students of limited English proficiency and students with disabilities to succeed through supportive services, such as counseling, English language instruction, child care and special aids;

(18) assure that each funded program/project is of sufficient size, scope and quality to bring improvement in the quality of education offered by the school;

(19) assure that each activity to be funded will be carried out in cooperation with the sex equity program;

(20) assure that sufficient demographic information will be provided to the state to permit it to carry out the allocation requirements for area vocational-technical schools;

(21) assure that disabled students in Perkins projects will be assisted in fulfilling the transitional service requirements of the Individuals with Disabilities Education Act;

(22) assure that special population students are provided with vocational program(s)/ project(s) in the most integrated setting possible;

(23) assure that supplementary services will be provided to special populations;

(24) assure that participating special populations will be provided with guidance, counseling and career development activities conducted by professionally trained counselors and teachers;

(25) assure that counseling instruction services will be designed to facilitate the transition from school to post-school employment and career opportunities;

(26) state whether non-federal funds will be used if federal funding is insufficient to carry out the supplementary services for special populations;

(27) provide sufficient information for the state to prove your program complies with the specific requirements for serving individuals with disabilities (see Appendix A, section 403.32(a)18-26);

(28) assure compliance with requirements of Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act and regulations implementing these statutes;

(29) include the number of disabled students, economically disadvantaged students and students with limited English proficiency in vocational programs;

(30) include an assessment of the needs of disabled students, economically disadvantaged students and students with limited English proficiency;

(31) describe the plan to provide supplementary services sufficient to meet the needs identified in the assessment described in item 30.

CHAPTER 5
USING OTHER PERKINS FUNDS

In addition to basic grant funds for local secondary, postsecondary and adult programs, Titles II and III of the Perkins Act provide assistance for a variety of other activities. Many of these involve grants to states, but some funding is available for local programs as well. This chapter discusses the rules that apply to these other programs.

State Programs

Each state's Title II allocation includes 8.5 percent for state programs and state leadership activities. Some of these funds may be available for local programs since state agencies are authorized to use all or part of this set-aside directly or to allocate part to schools operated by the state or through awards to eligible recipients. The state agency, however, must expend at least some federal funds for three mandated activities—professional development, curriculum development and dissemination, and assessment of projects, including the development of performance standards and measures. Neither the statute nor the regulations prescribe the minimum amount the state must expend for these three areas. Expenditure reports submitted at the end of each funding period, however, must demonstrate federal funds were obligated for activities in each area.

In addition to these three mandated activities, the state is **permitted** to expend part of its 8.5 percent set-aside for the following activities:

(1) promotion of partnerships among business, education, industry, labor, community-based organizations or governmental agencies;

(2) support for tech-prep education as described in Title III;

(3) support of vocational student organizations, especially with respect to efforts to increase minority participation in such organizations;

(4) leadership and instructional programs in technology education;

(5) data collection.

State Time Distribution Accountability

The state agency must maintain strict accountability, even when it allocates state leadership funds to local recipients. For example, the agency must carefully document time spent on funded and nonfunded activities. At the state level, specific attention must be paid to state agency personnel assigned both administrative and state leadership functions.

If a state agency official, for example, is assigned to state administration for 50 percent of his or her time and to the state assessment and development of performance standards for 50 percent, the Education Department General Administrative Regulations (Appendix B) require the state to maintain time distribution records to reflect that the employee in fact worked on each of these activities for half of his or her time. In the absence of such time distribution records, the state would be required to repay 100 percent of the employee's salary to the U.S. Department of Education.

Unlike the previous Perkins Act, the new law includes in state administration "technical assistance." An employee who works in both state administration and technical assistance is now **not** required to provide time distribution records, because state administration includes technical assistance. This change in the statute suggests state education agencies should review each position description to determine the extent to which each employee's responsibilities fall under the new definitions of state administration or state leadership.

Technology Education Programs

Particular attention should be paid to Section 201(c)(4) of the Perkins Act, which authorizes the state to use part of the 8.5 percent set-aside for leadership and instructional programs in technology education. This provision offers broad authority for the state to allocate funds for eligible recipients to carry out technology programs without all the "baggage" required by the basic grant and local application requirements. Although states may have very limited resources within the 8.5 percent for actual instructional programs in technology education, this legal authority remains a viable alternative to initiate "cutting edge" programs without adhering to the prescriptive basic grant requirements.

Vocational Student Organizations

A significant regulatory clarification regarding the use of state leadership activity funds to support vocational student organizations is set forth in 403.71(c). These regulations specify **Perkins funds may not be used to pay for** lodging, feeding, conveying or furnishing transportation to conventions or other forms of social assemblage; purchasing supplies, jackets and other items for students' personal ownership; supporting non-instructional activities such as athletic, social or recreational events; printing and disseminating non-instructional newsletters; purchasing awards for recognition of students, advisors and other individuals; or paying membership fees. This regulation codifies prior departmental policy on student organizations.

Equity Programs

A total of 10.5 percent of Title II funds is available for programs for single parents, displaced homemakers and single pregnant women and for sex equity programs. Programs for single parents, displaced homemakers and single pregnant women must receive at least 7 percent of a state's Title II grant. At least 3 percent must be used for sex equity programs. The remaining 1/2 percent may be used for either purpose, or a combination of the two.

Although the statutory and regulatory requirements for these equity programs are virtually identical to the requirements of the previous act, the system that must be used for allocating funds to eligible recipients is a significant departure. Awareness of these procedures may help you obtain equity funds.

The new act requires the state sex equity coordinator to distribute equity funds on a **competitive basis** and to allocate and distribute to eligible recipients or community-based organizations amounts that assure each program is of sufficient size, scope and quality to be effective.

The requirement to allocate funds on a competitive basis may well be examined by the auditors, and any allocation of funds using a pre-determined formula will result in an audit exception. Eligible recipients must be notified in advance of the selection criteria against which all applications will be evaluated. The coordinator must then maintain on file sufficient documentation to demonstrate that applications were fairly judged against the published criteria and allocations were made to those applications scoring highest against the prescribed criteria. Failure to adhere to this competitive process also could invite legal challenges by disgruntled eligible—but not selected—recipients.

The sex equity coordinator also must develop procedures for data collection from eligible recipients and community-based organizations. The coordinator should require recipients to maintain data on individuals served that allows program effectiveness to be sufficiently evaluated.

Programs for Criminal Offenders

At least 1 percent of the state's Title II funds must be spent on programs for criminal offenders. The act provides that funding for such programs will not drop below fiscal year (FY) 1990 levels. Accordingly, states must reserve for criminal offender programs an amount not less than the total dollars expended in FY 1990.

The act also places total discretion for the expenditure of these funds under the jurisdiction of the state corrections educational agency. This agency is required to submit to the state board a plan explaining precisely how it intends to use these set-aside funds.

In addition, state corrections education agencies qualify as education agencies for other basic grant funds.

Community-Based Organizations and Consumer and Homemaking Education

Congress has appropriated Title III funds for the community-based organizations program under Part A and the consumer and homemaking program under Part B. The new law and regulations include very few changes in these programs compared to the previous act.

The funding available for State Assistance for Vocational Education Support Programs by Community-Based Organizations may be used for outreach, transitional services, prevocational preparation, career intern programs, school dropout programs, student assessment and vocational guidance and counseling. The CBO must submit an application jointly with an eligible recipient to the state. The application must designate a fiscal agent or the entity that will be responsible for the proper control of federal funds.

Some states are reluctant to allocate the funds directly to a CBO due to a lack of a fiscal track record or audit history. Accordingly, it is in the interest of the CBO to work closely with either the local educational agency or postsecondary institution in the area. Since the state is ultimately liable for the expenditure of CBO funds, most state educational agencies would prefer to see CBOs associate with LEAs and postsecondary institutions because of their longer history of fiscal accountability.

With regard to consumer and homemaking funds under Part B, the state must expend at least one-third of the funds in economically depressed areas or areas with high rates of unemployment. In addition, no more than six percent of the funds are allocable for state administration. Although the state requires full-time state administrators, the regulations provide that this requirement may be filled with only one full-time administrator. States are also permitted under the regulations to use part of the five percent state administration setaside in the basic state grant for consumer and homemaking administration. Under Part B authority, the state has considerable discretion regarding which entities may receive funds. The full range of eligible programs, activities and services is described in section 312(b) of the law.

Tech-Prep Education Programs

The Perkins Act provides funding and related requirements for tech-prep programs—combined secondary and postsecondary programs that lead to an associate degree or two-year certificate and to employment. Such programs may be funded through basic grants, through Title III tech-prep education funds or through technology education funds within the state leadership set-aside. Basic grant recipients must follow all basic grant requirements. Other tech-prep programs must meet the requirements discussed here.

Tech-prep programs supported by Title III or state leadership funds must be implemented through an articulation agreement between members of a consortium. The consortium must consist of an institution offering two years of secondary school preceding graduation and an institution offering two years of higher education or an apprenticeship training program lasting at least two years after secondary instruction.

The tech-prep program must provide, at a minimum, a common core of basic proficiencies in mathematics, science, communications **and** technologies designed to lead to an associate degree or certificate in a specific career field. The omission of any one proficiency will cancel the propriety of tech-prep expenditures.

In addition, each tech-prep program must include:

(1) curriculum development appropriate to the needs of the consortium participants;

(2) in-service teacher training in implementing tech-prep education program curricula effectively;

(3) joint training for teachers from both the secondary school and the postsecondary or apprenticeship program;

(4) an activity to train counselors to more effectively recruit tech-prep students and ensure they successfully complete tech-prep programs and are placed in appropriate employment.

Consortia recipients of tech-prep dollars are required to provide **equal access** to the full range of tech-prep education programs for the five special populations. This equal access provision must include the development of a tech-prep education program appropriate to the needs of special populations. In addition, preparatory services must be provided to assist all participants in tech-prep education programs.

Once all these requirements for the tech-prep program are satisfied, the consortium also may use tech-prep funds for equipment acquisition. These purchases, however, are not subject to the same restrictions discussed in Chapter 4 relating to the use and shared use of equipment under the basic grant. This flexibility on equipment can be triggered only if all tech-prep requirements are met.

CHAPTER 6

IDENTIFYING ALLOWABLE COSTS

Expenses charged to a Perkins grant must be spent for appropriate purposes, as discussed in Chapters 4 and 5. Each cost also must fit into the category of allowable expenses as defined in the Education Department General Administrative Regulations (EDGAR) (Appendix B).

The regulations provide that federally assisted programs must bear their fair share of costs. Only certain costs may be allocated to the Perkins grant, and those must be adequately administered and documented. Costs fall into three categories for federal grant purposes—allowable, allowable only with prior grantor approval or not allowable.

Allowable Costs Criteria

All allowable costs, with or without prior approval, must meet three primary criteria. You must first be able to show the cost was **necessary and reasonable** for proper and efficient administration of the Perkins project.

Second, the cost must be **allocable** to the Perkins project. A cost is considered allocable to a particular federal program to the extent it actually benefits the objectives of that program. Therefore, if you can show the project's objective was actually advanced by the cost incurred, the cost will be considered allocable.

Allowable Costs

necessary and reasonable

allocable

not a general expense

The third criterion is that a cost must **not be a general expense** required to carry out your agency's overall responsibilities.

Allowable Costs

EDGAR sets out standards for determining the allowability of certain costs under Perkins. Allowable costs include personnel expenses, discussed in detail in this section, as well as general expenses required to administer the project that would not otherwise be incurred for the general administration of a state or local agency. These would include expenses incurred for:

(1) establishment and maintenance of accounting or other information systems to the extent they relate to grant project management, but not as related to central accounting, which would be considered a general agency expense;

(2) advertising to recruit personnel, solicit bids for goods and services, provide for disposal of scrap or surplus materials acquired in the performance of the grant and for other purposes specifically provided for in the state plan or local application;

(3) operation of technical advisory councils at the state or local level;

(4) audits related to the Perkins project;

(5) development, preparation, presentation and execution of budgets, except for central budgeting expenses;

(6) disbursement of federal funds, such as processing checks or warrants;

(7) legal expenses required in grant administration or in connection with audit appeals (legal expenses for the prosecution of other claims against the federal government are not allowable);

(8) printing and reproduction of forms, reports and manuals related to the Perkins project administration, allowable only when provided for in the grant agreement;

(9) travel costs including transportation, lodging and subsistence costs for employees on official business incident to the project.

Travel costs may be charged on either a per-diem or actual-costs basis or a combination thereof, provided the method used is applied to an entire trip and results in charges consistent with those normally allowed in like circumstances in the recipient's non-federally sponsored activities. Perkins funds may be used to cover the costs of attending conferences such as the AVA Convention to the extent you can demonstrate such expenditures directly relate to the improvement of funded program(s)/project(s).

Other general allowable expenses include the following:

- Bonding
- Building lease management
- Central stores
- Communications
- Depreciation and use allowances
- Exhibits
- Maintenance and repair
- Materials and supplies
- Memberships, subscriptions and professional activities
- Motor pools
- Procurement services
- Taxes
- Transportation.

All these general expenses are allowable to the extent that they are necessary to administer the grant project. The costs will be disallowed, however, if the U.S. Department of Education determines they are general costs of local government administration that would have been incurred regardless of the implementation of the Perkins project. Charges to federal grants also must comply with state and local procurement and expenditure rules.

Personnel Expenses

In general, employee compensation is an allowable expense under the Perkins Act. Wages and salaries charged to the project must be reasonable. To determine reasonableness, the salaries will be compared with those paid for similar work in other activities your agency carries out. If there are no comparable activities, the salaries will be considered reasonable to the extent they are comparable to those paid for similar work in the labor market.

Salary charges must be documented by payroll records maintained in accordance with the generally accepted practice of the state or local agency. This means a federal audit may question salaries if payroll records do not comply with state or local law, even if the salaries clearly supported allowable activities under the federal grant.

Payrolls must be supported by individual employee time and attendance records. If an employee divides his or her time between more than one federally supported project (say, for example, Perkins and Chapter I), EDGAR requires that the employee keep records of time distribution between projects. Additionally, if an employee works on two or more grant objectives under Perkins (such as sex equity and tech-prep), time distribution records are necessary. Since this is a major area of audit concern, time distribution records are discussed in greater detail in Chapter 9.

Allowable personnel costs also include employee fringe benefits and employee morale, health and welfare costs. Benefits such as life and health insurance, unemployment insurance, worker's compensation and pension plans are allowable provided such benefits are granted under approved plans and are distributed equitably to the Perkins projects and

Perkins Act Expenditures

ALLOWABLE

- Accounting
- Advertising
- Advisory councils
- Audit service
- Bonding
- Budgeting
- Building lease management
- Central stores
- Communications
- Compensation for personal services
- Depreciation and use allowance
- Disbursing service
- Employee fringe benefits
- Employee morale, health and welfare costs
- Materials and supplies
- Memberships, subscriptions and professional activities
- Motor pools
- Payroll preparation
- Personnel administration
- Printing and reproduction
- Procurement service
- Taxes
- Training and education
- Transportation
- Travel
- Exhibits
- Legal expenses
- Maintenance and repair

ALLOWABLE WITH PRIOR APPROVAL

- Automatic data processing
- Building space and related facilities rearrangements and alterations. Occupancy of space under rental-purchase or lease with option-to-purchase agreement
- Pre-agreement costs
- Professional services (outside agencies or consultants)
- Proposal costs
- Capital expenditures
- Insurance and indemnification (some types)
- Management studies (outside agencies or consultants)

UNALLOWABLE

- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Governor's expenses
- Interest and other financial costs
- Legislative expenses
- Underrecovery of costs under grant agreements
- Any costs not necessary and reasonable
- Any costs not allocable to the program
- General expenses required to carry out the overall responsibilities of government

to other non-grant activities. Employee morale, health and welfare costs include costs such as employee infirmaries and recreational facilities. Any income from those facilities must be offset against grant expenses. Personnel costs also include personnel administration as well as employee training and recruitment costs.

Costs Allowable with Prior Approval

Certain costs are allowable under Perkins and related programs, but only with prior approval of the U.S. Department of Education.

Generally, the costs for building space and related maintenance are allowable costs regardless of prior approval. However, if costs are charged to the Perkins project for **building space during periods of non-occupancy**, authorization is required. General rental and maintenance costs are allowable, but approval must be obtained for costs incurred for **rearrangement and alteration of facilities** that will materially increase their value or useful life. In addition, the cost of space procured under a **rental-purchase or lease with option-to-purchase agreement** is allowable only with prior approval.

Prior approval also is required for most categories of **capital expenditures.** This includes the cost of facilities or other capital assets as well as repairs to those assets that materially increase their value or useful life. If the asset is later sold or no longer available for project-related use, the federal government's equity in the asset must be refunded in the same proportion as federal participation in its costs. The regulations also give special mention to the requirement of prior approval for acquiring automatic data processing equipment.

Insurance and **indemnification** also have prior approval requirements in limited cases. The cost of insurance required under a grant agreement is allowable, but certain limitations apply to other insurance costs connected with the general conduct of activities. Clearly, all insurance costs must be in accordance with general state or local government policy and sound business practices. Insurance for the risk of loss or damage of federal government property must be specifically approved, as must contributions to a reserve for a self-insurance program.

USDE will indemnify grantees against liabilities to third persons or other losses not compensated by insurance only to the extent expressly provided for in the grant agreement. Actual losses that could have been covered by permissible insurance are not chargeable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, are allowable.

In addition, **costs incurred prior to the effective date** of the grant or costs of preparing proposals on potential federal government grant agreements are allowable only when specifically provided for in the grant agreement.

Costs Not Allowed

As previously noted, any costs considered general costs of government are not allowable charges to the Perkins Act or similar federal programs. The salaries and expenses of the office of the state governor or chief executive of a political subdivision, for example, are not allowable. Salaries and other expenses of state or local legislatures and school boards also are not allowable.

The regulations also contain a list of other costs that are not allowable. Prior approval of the U.S. Department of Education **cannot** make them allowable. No federal official can waive these requirements. Specific costs not allowed include:

(1) contributions to a contingency reserve for unforeseen events;

(2) costs resulting from violations of, or failure to comply with, federal, state and local laws and regulations;

(3) interest on borrowings, bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith.

"Interest" in this area can be very tricky. For example, if you purchase computer equipment on an installment sales contract, part of your payments will be interest and not allowable. However, if the equipment is leased under a lease agreement, the payment may or may not be termed "interest." You must review the contract very carefully to make certain there is no reference to "interest" as a component of payment.

In addition, any excess of cost over the federal contribution under one grant agreement is not allowable under other grant agreements.

Broad categories of costs not allowed include:

- Bad debts
- Contributions and donations
- Entertainment costs, including social activities and incidental costs such as meals, lodging, rentals and transportation.

CHAPTER 7

CHARGING COSTS

Allowable Perkins expenditures may be charged as either direct or indirect costs in keeping with a cost allocation plan. This chapter discusses these practices.

Direct Costs

A direct cost is expended exclusively for one grant project and can be identified with a specific project objective. Such costs may be charged directly to the Perkins project, as long as they are allowable.

Common examples of direct costs include:

(1) employee compensation for time and effort devoted specifically to grant program execution;

(2) cost of materials acquired, consumed or expended specifically for grant purposes;

(3) equipment and other approved capital expenditures directly related to grant objectives;

(4) cost of services from outside agencies that directly benefit the grant objective.

There is no universal rule for classifying certain costs as either direct or indirect. In fact, you are allowed some flexibility to treat a specific cost as either direct or indirect. It is essential, however, that each cost item be treated **consistently.** For example, consider the salary of a local employee who processes payroll. You might know that person works 20 percent of the time on the Perkins program and therefore charge 20 percent of the salary as a direct expense to the Perkins grant. Or, it might be very complicated to calculate how much time the employee spends on the Perkins project. In this case you might want to charge this salary expense as an indirect cost using the indirect cost rate, discussed later in this chapter. In either case, once you have chosen to charge the employee's salary as either a direct or an indirect cost, you must consistently charge it as such.

Indirect Costs

Both direct and indirect costs represent costs incurred to administer a grant project. However, indirect costs have a fairly technical meaning set forth in the Education Department General Administrative Regulations. Indirect costs are those that benefit the grant project but cannot be easily distinguished from expenses that benefit other programs as well—items such as utilities or rent. Because indirect costs serve multiple activities, they cannot easily be allocated to one particular grant. In fact, an indirect cost could benefit both federal and non-federal program objectives. Significantly, any expense charged as an indirect cost must be allowable under the Perkins program.

According to the regulations, indirect costs are those incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the benefited cost objectives without disproportionate effort. Thus, while the entire salary for a person to administer a Perkins grant is a direct cost to that grant, part of the overall electrical bill of the local educational agency's building might be charged as an indirect cost. Further, since the electrical bill for the building also conceivably benefits other grants (such as Chapter I or IDEA), this cost properly would be shared or apportioned among such grants.

Indirect costs include costs originating in the grant-receiving department as well as those incurred by other departments in supplying goods, services and facilities. The term "indirect costs" is something of a misnomer, because these costs must directly benefit the grant project. With indirect costs, however, it is difficult to calculate how much of a cost benefited the grant project because other programs benefited as well. Therefore, the true distinction between direct and indirect costs is not whether they directly benefit the grant project but the effort required to determine how much cost was incurred in gaining that benefit.

Indirect Cost Rate

When preparing a grant's funding proposal you will project indirect costs for a given year by developing an indirect cost rate. This rate is applied to total grant funds to determine the amount to be charged for indirect costs. Since the indirect cost rate must be determined before you spend grant funds, you compute it based on costs incurred in a prior fiscal year. Accordingly, at least two fiscal years are always considered—the year of grant use and the base year (the year used to calculate the indirect cost rate).

The preparation of an indirect cost proposal is essentially a four-step process. First, you must create an indirect cost pool. This basically consists of all expenditures allocated for central service items—that is, those services that benefited several grant projects. The allocability of a cost is, in part, determined by whether the cost is necessary and reasonable for a grant project's administration. It is important to note, however, that the cost entered into the indirect cost pool, by definition, will benefit both non-federal activities and federal grant projects.

To Determine Indirect Cost Rate

Step 1: Create indirect costs pool.

Step 2: Determine percentage of pool used by each division.

Step 3: Calculate direct costs for each division.

Step 4: Divide indirect costs by each division's direct cost total.

Second, allocate the costs in the indirect cost pool to the various organizational entities or divisions within the institution. This allocation can be based on a cost analysis study, the number of employees in each division or several other ways.

Third, calculate direct costs for each division. These include all costs not in the indirect cost pools.

Fourth, divide each entity's indirect cost total by its direct cost total. For example, if the vocational education division of a local education department had $5 million in indirect costs and $20 million in direct vocational costs, the indirect cost rate would be $5 million divided by $20 million, or 25 percent.

A negotiated fixed amount in lieu of indirect costs may be appropriate when benefits derived from indirect services cannot be readily determined, as in the case of small, self-contained or isolated activities. When this method is used, you should determine that the amount negotiated will be approximately the same as the incurred indirect cost. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before allocation to remaining activities.

Indirect Cost Proposals

The state agency must approve your proposed indirect cost rate before you begin using grant funds. Since the rate is based on a prior year's spending, it represents only an estimate of indirect costs. Typically the rate is adjusted before each fiscal year to more accurately reflect indirect costs in the most recent year. Each year you propose, and the state approves, a new indirect cost rate. The U.S. Department of Education approves an indirect cost rate for the state agency.

Using Your Indirect Cost Rate

Once your division's indirect cost rate has been approved, you multiply the rate by your Perkins grant amount to determine the total to be charged for indirect costs. For example, if you have a $100,000 grant and a 5 percent indirect cost rate, you assign $5,000 in your budget to indirect costs. This $5,000 is considered spent on indirect costs; you may not use these funds for other costs, and you may not charge more than $5,000 of indirect expenses.

Cost Allocation Plans

A cost allocation plan is a document that identifies allowable costs under a grant or contract and describes the methods used to accumulate, distribute and allocate those costs. The plan is required if a joint cost (a cost attributable to more than one program) ultimately will result in charges to a grant. Such an allocation plan must include:

(1) the nature and extent of services provided and their relevance to the federally sponsored project;

(2) the expense items to be included;

(3) the methods used to distribute costs.

A cost may be allocated to a particular project objective in proportion to the benefits that objective receives. All costs included in the plan must be supported by formal accounting records that substantiate their propriety.

The allocation plan should cover all joint costs incurred by your department as well as costs incurred by other departments and agencies in carrying out the grant project. All agencies rendering services under the grant should combine their cost allocation into a single, joint plan. The plan should discuss the nature and extent of services provided, including an explanation of their relevance to the federal program's goals, expense items to be charged and methods to be used in cost distribution.

The U.S. Department of Education will work with state and local agencies to negotiate, approve and audit cost allocation plans. The plan will include the cost of central support service and other indirect costs. Therefore, approval of an indirect cost rate will be relevant to the approval of the overall allocation plan. Plans may be submitted on both the state and individual grantee agency level. Cost allocation plans must be retained at the local government level for audit by USDE.

CHAPTER 8

THE AUDIT PROCESS

Any recipient of more than $25,000 in federal grants, including Perkins funds, must undergo an annual audit. This chapter describes the audit process and suggests ways to prepare for this annual event.

Audit Requirements

The Office of Management and Budget (OMB) publishes OMB Circular A-128, which explains the single audit requirements for state and local governments that receive federal aid. This publication, included as Appendix E of this handbook, also describes federal responsibilities to oversee implementation of audit requirements.

The legal authority for A-128 is the Single Audit Act of 1984. In general, the Single Audit Act requires that state and local governments receiving $100,000 or more of federal funds in a year must be audited for that year in accord with the requirements of A-128. State and local governments receiving between $25,000 and $100,000 in a year must be audited either in accord with A-128 **or** in accord with the laws and regulations governing the program. Finally, state and local governments receiving less than $25,000 are exempt from A-128 but must comply with state or local requirements. Each kind of audit must be arranged by the state or local government itself in accord with standards set forth in A-128 as described below.

In determining that $100,000 has been received, A-128 defines federal financial assistance very broadly. It includes grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance and direct appropriations, but not direct cash assistance to individuals. Federal aid is counted whether received directly from the federal government or through intermediary units of state or local government.

The audit must be performed by an independent auditor in accordance with generally accepted government auditing standards set forth in the Standards for Government Organizations, Programs, Activities and Functions. An auditor can be a state or local government auditor or a public accountant. Either type must meet the independence standards set forth by the generally accepted government auditing standards.

The audit may either cover a state or local government's entire operations or be performed on an agency-by-agency basis for those agencies receiving the requisite level of federal funds. However, if a state or local government receives more than $25,000 of general revenue-sharing funds in a year, it must have an audit of its entire operations. Public colleges and universities may be excluded from the audit. They must be audited under OMB Circular A-110, which is similar in scope to A-128.

Failure to conduct an audit in accord with A-128 can result in disallowance of the audit cost, withholding of some future assistance payments until the audit is completed, withholding of overhead costs or, ultimately, suspension of the federal assistance agreement. These audit requirements must be taken seriously.

Audit Scope

A-128 specifies three areas that must be reviewed by the auditor—financial statements, internal controls and compliance with laws and regulations—and contains detailed instructions pertaining to each.

Financial Statements

The auditor must determine whether financial statements fairly present the financial position and results of your financial operations in accord with generally accepted accounting principles.

Internal Controls

Internal controls are the methods you adopt to ensure that resource use is consistent with laws, regulations and policies; resources are safeguarded against waste, fraud and misuse; and reliable data are obtained and disclosed. The auditor must test the internal controls to ensure these goals are met. As part of this process, the auditor must test whether internal control systems are working and also must examine your system for monitoring subrecipients of federal funds.

Compliance Review

The law also requires the auditor to determine whether you have complied with all laws and regulations that may have a material effect on each major federal program. A major federal program is, in general, one in which federal expenditures constitute more than 3 percent of total expenditures for all programs. If Perkins funds constitute at least 3 percent of your agency's total expenditures, the auditor must conduct a compliance review.

The compliance review also must include a test of a representative sample of transactions. For this test, the auditor must determine whether expenditures were for allowable services and whether service recipients were eligible beneficiaries. The auditor also must review for compliance with matching, levels of effort and non-supplanting requirements, each of which is discussed in Chapter 9.

In conducting the compliance review, the auditor should use any compliance supplements available or, if not available, the statutes, regulations and agreements covering individual programs. An audit must be conducted annually unless the state or local government had a constitutional or statutory provision enacted before January 1, 1987, calling for less frequent audits.

Subrecipient Compliance

State and local governments that provide $25,000 or more of federal grants to subrecipients have specific responsibilities to monitor their compliance. Thus, the state vocational agency must monitor local compliance with A-128. The three most important monitoring responsibilities are:

(1) determining whether the subrecipient has complied with its audit responsibilities;

(2) determining subrecipient compliance with applicable laws and regulations through review of its audits or by conducting a program review;

(3) ensuring corrective action in instances of non-compliance.

Cognizant Agency Role

Federal agencies also have responsibilities related to A-128 audits. Each state vocational agency is assigned a cognizant federal agency (generally the U.S. Department of Education, Department of Agriculture or Department of Defense) that is responsible for assuring that audits are conducted in compliance with A-128 and for providing technical assistance in doing so. The cognizant agency also will ensure that substandard audits are corrected and in compliance with A-128. Finally, the cognizant agency ensures that audit findings are appropriately resolved within six months.

Audit Costs

A-128 permits the audit costs to be charged prorata to federal programs. Generally, the percentage of costs charged to the Perkins project should not exceed the percentage of all vocational funds expended that Perkins funds represent. However, that proportion may be exceeded by appropriate documentation indicating a higher cost to audit the Perkins project. Indeed, reviewing compliance with the Perkins regulations will invariably consume more time than auditing a vocational program's nonfederal aspects.

Auditor Selection

A-128 contains detailed instructions for selecting the auditor. The procurement must follow standards published in 34 CFR Part 80, which is included as Appendix C of this handbook. Several additional procedures also are mandated to assure the participation of small and/or minority-owned audit firms.

Federally Conducted Audits

State and local audits conducted pursuant to A-128 are meant to be in lieu of other audits under individual program requirements. However, the U.S. Department of Education occasionally may find additional audits necessary to carry out its responsibilities under federally funded programs. Such audits are conducted by representatives of the U.S. Department of Education's Inspector General's Office (IGO). In federally conducted audits, an IGO official—normally the Regional Inspector General for your region—will send a letter informing you of intent to conduct an audit, identifying the program and fiscal years to be reviewed and, usually, proposing a date. You have no choice in providing these auditors access to your records. However, you can and should insist the dates be convenient. If the proposed dates are not, suggest alternatives until a mutually agreeable time is found.

Once a federally conducted audit is completed, resolution occurs the same way as for A-128 audits.

Audit Report

At the close of the audit, the auditor must prepare a written report covering the three areas that comprise the audit—financial statements, internal controls and compliance. The report, submitted to the auditee and the U.S. Department of Education, must cover all required audit areas (as described in previous sections of this chapter). In addition, any illegal acts or fraud, waste or abuse must be reported separately and directly to the cognizant agency.

If the audit report questions any expenditures, the USDE initiates a process for resolving the problems. This audit resolution process is described later in this chapter.

Initiating the Audit

There are two main variations as to how the audit process begins, depending on the type of audit scheduled—an A-128 audit or a federally conducted audit. As previously discussed, a federally conducted audit is initiated by the Inspector General's Office.

An A-128 audit begins at your initiation. You must locate an auditor who satisfies the criteria set forth in A-128 and independently arrange for the audit. Because this occurs at your initiation, scheduling will be almost completely in your control.

Audit Preparation

- Form audit committee.
- Assemble needed documents.
- Prepare program staff.
- Review applicable records.
- Prepare general staff.

Preparing for the Audit

Audit preparation is by far the most critical activity you will undertake. Unfortunately, it is also the most frequently neglected area.

Auditors are often unfamiliar with audit programs such as Perkins. Further, they are not necessarily familiar with your organizational structure. Either or both of these factors can result in misunderstanding and adverse audit findings that do not accurately reflect conditions at your agency. These adverse findings can result in huge liabilities that represent not misspent or improperly allocated funds, but miscommunication. There are many steps you can take to avoid this type of liability, and virtually all require proper preparation. It is critical to bear in mind that once audit findings are made, they are extremely difficult to eliminate, even if erroneous.

Step One: The Audit Committee

The first step is an organizational one—forming an audit committee to deal with the auditor. This is a critical step, because the auditor will be making both fiscal and programmatic inquiries. To ensure representation from both fiscal and programmatic areas, recruit at least one committee member from each area. This is your smallest possible committee; other representatives may be added as appropriate.

Once the committee is formed, one member should be assigned responsibility for working with the auditor. All contacts should go through that individual—called the audit representative. This will reduce casual contact between the auditor and staff. That is not to say the auditor should or even can be precluded from staff contacts. However, those contacts should be in a controlled environment and not, in any sense, casual.

Step Two: Document Review

The next step is to review all correspondence, especially document requests, received from the auditor prior to the visit. Frequently you will not receive any such requests for an A-128 audit. For a federally conducted audit, however, a document request normally will be made.

If an advance request for documents is made, take advantage of it. This is an invaluable tool that allows you to prepare specific records the auditor will be reviewing. Have those records assembled for the auditor, and review them carefully to ensure they are in proper form and no records are missing.

If records are missing, reviewing documents in advance gives you the opportunity to look for them and, if you cannot locate them, to reconstruct the missing information. While a reconstructed record must be designated a reconstruction, it is nonetheless far better than a total absence of information. Significantly, auditors frequently will be willing to rely on a reconstructed record provided it has some indication of reliability. If an audit determination advances to the U.S. Department of Education, USDE is far less willing to accept a records reconstruction than the auditors. However, if the auditor accepts your reconstruction, an adverse audit determination may be avoided and, therefore, USDE likely will not be involved.

Step Three: Program Staff Preparation

The next step is to speak with each person who has any responsibility within the program area to be audited. Carefully review the person's responsibilities as reflected in the detailed position description and any other personal documentation reflecting position responsibilities. All employees should be aware of their assigned duties and responsibilities.

In addition, such employees should be made aware of the funding source for their salaries. Alternatively, if it is not appropriate for individuals to know their salary source, they should be instructed not to speculate on such to the auditor. If an uninformed employee answers the auditor erroneously as to funding source, an adverse audit determination may result and, even if blatantly mistaken, be very difficult to overturn.

Be sure each person assigned to work on a specific Perkins project is working on that project. Determine the extent to which people working on specific Perkins activities are performing other, possibly unrelated and ineligible tasks. Some *de minimis* ineligible work—under 5 percent of an employee's effort—is permitted. If this work reaches a level where it is no longer insignificant, however, an adverse audit finding can result because the federal grant is paying 100 percent of the salary.

Records Typically Needed for an Audit

- Accounting Records
- Time Distribution Records
- Local Application

These records should be retained for five years after the close of the fiscal year.

Step Four: Records Review

Next, review agency records generally. This review is far broader than the review based on the document request and should encompass all records for all program areas to be audited, both fiscal records and program compliance records. Make sure these records are in order, and follow the procedures described earlier for reconstructing missing records.

Try to anticipate problem areas. Areas involving a questionable interpretation of the law provide two possibilities. Your best choice is to follow the procedure set forth by the U.S. Department of Education for obtaining a binding interpretation. These procedures are published at 34 CFR 81.23 and included in Appendix D of this handbook. If you choose this procedure, you must follow the published procedures exactly. An alternative is to obtain a letter from a local or general counsel. While these opinions are not binding on auditors, they may be persuasive and may induce an auditor to pass on a marginal finding that would otherwise become an audit finding.

Step Five: General Staff Preparation

The next step is general staff preparation. The staff must be informed that the audit process is a formal legal inquiry into the entity's official books and records. Accordingly, all discussions with the auditor should be formal and on the record. (Note, however, that the law provides for individuals who desire anonymity to contact the auditor directly and speak confidentially.) There is no such thing as a casual or off-the-record discussion during the audit process. All meetings and conversations with the auditor should be conducted in a formal context. Staff members should not speak to the auditor except through formally prearranged appointments. These appointments will be made through the audit representative. Also make certain staff members understand the audit representative's role in document handling, as described in the next section.

Audit Participation

- Set ground rules.
- Establish a separate work area.
- Channel document requests.
- Hold progress meetings.
- Review Perkins regulations.
- Debrief interviewed staff.
- Maintain open communication.
- Hold an exit interview.

Participating in the Audit

The next phase begins with the auditor's arrival on site.

Set Ground Rules

Schedule an initial interview, even if the auditor does not request one. This is an important opportunity to set ground rules. Although you set these rules, they should generally be well received since they will facilitate the audit and help the auditor do his or her job.

The function of ground rules is to assist the auditor in conducting the audit while assuring the auditor focuses on the relevant critical information. This is not to suggest any auditor requests can be refused. Federal program participants are required to provide unimpeded access to virtually any books or records auditors wish to see. Rather, the purpose of ground rules is to ensure available and relevant books and records are properly placed before the auditor and reviewed.

Auditor Space Accommodations

The auditor should work in a separate room. This reduces distractions, minimizes casual contact and creates an aura of formality appropriate for this type of inquiry.

The initial meeting should take place in the room set aside for the auditor. The audit representative should lead the meeting and explain it is the agency's desire to participate fully and provide prompt response to any auditor request. When the auditor wishes to interview individuals, a list of such individuals should be provided to the audit representative as far in advance as possible.

Audit Documentation

During the audit process, record and maintain copies of:

- advance document requests, if any
- information used to reconstruct records, if any
- USDE or attorney interpretations of law, if any
- all documents copied for auditor
- list of documents requested and reviewed on-site
- list of staff members interviewed
- each employee's written record of interview
- notes taken by audit committee while debriefing interviewed employees
- audit report draft

Auditor Document Requests

Additionally, tell the auditor all document requests, including documents to be photocopied, should be made through the audit representative. The representative should make and retain an additional copy of each document copied. While this may seem redundant, it is nonetheless helpful to have a record of each document copied and turned over to the auditor. This provides an indication of the auditor's background work and also ensures that, in later audit appeals, documents available at the audit remain available.

Progress Meetings

Ask if the auditor is willing to have periodic, even daily, meetings with the audit representative to discuss audit progress. These meetings can be extremely helpful and important. It is at this time you can learn about areas of concern. Many times these areas can be rectified during the course of the audit, without waiting for an adverse audit finding. For example, the auditor may fail to find adequate documentation for expenditures because the documentation is not contained within the records system being examined. If you discover this early enough, you can show the appropriate records and avert a finding.

Perkins Review

It is also important to discuss the Perkins projects the auditor will review. Determine whether the auditor has adequate familiarity with Perkins and, specifically, such complex and unusual fiscal requirements as supplanting or the new comparability requirement. In these areas, a little knowledge can be truly dangerous. Auditors who use routine, oversimplified tests for supplanting almost always find it. It is critical that you determine the auditor's level of knowledge in these areas and be prepared if that level is insufficient to argue appropriate positions. Failure to do this can cost significantly in adverse audit findings.

Staff Debriefings

All persons interviewed by the auditor should be debriefed during the course of the audit. Debriefing should be conducted by an audit committee member and, if possible, an individual familiar with the specific Perkins activity. Take copious notes. In addition, ask interviewees to create their own written recollections of what occurred at the interviews.

Open Communication

Open communication during the course of the audit can be extremely helpful. Try to anticipate the auditor's areas of interest, and ask about them. If you encounter a problem you are not sure how to remedy, ask the auditor. Auditors, especially private A-128 auditors, can be very helpful in suggesting alternative routes to resolving simple problems.

Exit Interview

At the end of the audit, request an exit interview with the auditor. At this time you should be able to learn virtually all areas of potential findings. An exit interview provides an additional opportunity to persuade the auditor that certain findings are erroneous. Even if you cannot do that, it will give you an opportunity to begin preparing for your audit appeal. While the initial processes are lengthy prior to formal appeals, the appeal process moves quite quickly. Accordingly, any lead time can be very helpful in allowing you time to prepare for subsequent legal challenges.

The Audit Resolution Process

The audit resolution process begins as soon as the auditor has finished at the audit site.

Audit Report Draft

The first step to audit resolution is an audit report draft. Federal auditors will always provide a draft. A-128 auditors should be requested to provide one. The audit report draft represents the auditor's view of the situation. If you do not respond to it, the draft will become the final report.

Review the document carefully, then schedule a meeting with the auditor. This provides a further opportunity to correct errors or fill in gaps. Address any problems and back up any contentions with detailed documentation. If there is a significant area of disagreement that could be addressed by further audit work, invite the auditor back.

Draft Report Response

You next have an opportunity to submit a formal written response to the draft report. This response is reviewed by the auditor and incorporated into the final audit report. Ask that the response be incorporated in full. Paraphrasing can significantly detract from or eliminate its impact.

Agency Review

At this point an A-128 audit report is submitted to the cognizant agency—in most instances, the U.S. Department of Education. In general, USDE is required to resolve audits within six months of issuance. This resolution phase starts with USDE receipt of the final audit report and ends with official agency determination on that report. It does not include the later formal appeal processes by which the official determination can be challenged.

The A-128 audit report is first submitted to the Inspector General's Office (IGO) for your region. The IGO reviews the audit to confirm technical compliance with audit guidelines. If the audit does not meet the standards, it is returned for corrective action. If the audit is technically sufficient it is forwarded to the education program official responsible for resolution. This person, referred to as the action official, is most often the Assistant Secretary for the Office of Vocational and Adult Education.

To determine resolution, this official reviews the audit, your response and other programmatic data. The action official may decide additional information is necessary and, if so, requests it from the IGO or you. The six-month period can be suspended in some circumstances when additional information is requested. Once the action official has sufficient information, he or she is responsible for preparing a preliminary departmental determination. This in general either allows or disallows costs the auditor questioned or identified as not allowable.

All these determinations must be made solely on the basis of applicable laws, regulations and interpretations. The resolution actions must be accompanied by a memorandum including legal justification for all decisions. The preliminary departmental determination must list all disallowed expenditures, indicate the reason for the disallowance in sufficient detail to allow a response, notify you of your appeal rights and notify you of the requirements for repayment.

The action official then forwards a draft of the preliminary departmental determination to the Office of General Counsel (OGC) for review. (The OGC may become involved earlier if significant or unusual legal issues arise.) After OGC review, most determinations are reviewed one final time by the Inspector General's Office. Internal procedures are used to resolve differences among these various offices.

Once agreement has been reached, the preliminary departmental determination is issued to the recipient. Upon issuance the audit is resolved and formal appeal remedies become available.

The Audit Appeal Process

If the grant recipient feels that the preliminary departmental determination (PDD) is unjustified, the decision may be appealed through a formal appeal process within the U.S. Department of Education. In order to appeal the PDD, the recipient must file a written statement with the USDE Office of Administrative Law Judges within 30 days of receipt of the PDD. The 30-day limit will be strictly enforced. Beware that appeal rights may be lost if you delay. The appeal letter, or "application for review," must include:

1) A statement certifying the date that you received the PDD. This is the date that it was received by your central mail room, not the date that the relevant official receives the PDD.
2) A short and plain statement of the legal and factual issues that you believe are inaccurate, including an explanation of your position regarding each issue and the amount of funds that you contend should not be required to be returned.
3) A statement of the facts and the reasons that support your position regarding those facts.
4) A copy of the PDD together with all of the attachments and enclosures.

Once the Office of Administrative Law Judges has received your appeal, the appeal will be assigned to an individual Administrative Law Judge (ALJ) who will determine whether all of the appropriate procedures have been followed to allow him to accept jurisdiction. The ALJ then sets a procedural schedule for the full submission of evidence and potential hearing. This must be held within 90 days of the Office of Administrative Law Judges' receipt of your appeal.

The ALJ may elect to waive the "90-day rule." This usually occurs by motion of either the recipient agency or the Department or by joint motion. Whoever requests a waiver of the 90-day rule must show good cause why the provision for expediency should be ignored. Good cause is often shown when a case is particularly complicated and will involve a great deal of gathering of evidence.

Waivers also often are granted as a result of requests for voluntary mediation. The regulations specifically provide for mediation of disputes. If both parties agree, an impartial mediator will be assigned. Mediation allows the parties to exchange information in a less formal setting, which may lead to partial or complete settlement without a full hearing. If at any time a party chooses to terminate mediation, the case will return to the ALJ.

The procedure before the ALJ generally involves the filing of complete legal briefs. The Assistant Secretary has the burden of stating its "prima facie" case in the PDD itself. Under the regulations, a prima facie case is a statement of the law and the facts that, unless rebutted, is sufficient to sustain the conclusion drawn in the PDD. Once the ALJ has accepted the case based on the PDD and the appeal letter, the recipient has the burden of proving that it is not required to return the amount of funds that the PDD requires to be returned. Generally, the ALJ will set a schedule that allows both parties to submit briefs and exhibits. If after the submission of briefs, the ALJ determines that material facts are in dispute, he may order an oral hearing as well. An oral hearing allows you to have witnesses testify as to the administration of the program. If you have strong, credible witnesses, this is often a useful tool to bring additional information into the record.

Based on the evidence and testimony submitted, the ALJ will issue an initial decision. The decision should include a complete statement of findings on both the factual and legal issues. This decision is appealable to the Secretary of the Department of Education. If a party wishes to obtain the Secretary's review of the decision of an ALJ, the party files a petition for review with the Office of Administrative Law Judges. The case will then be referred to the Secretary. The parties have 30 days from the date they receive the ALJ decision to file for review by the Secretary. The petition for review must contain a statement regarding the reasons why the party believes that the decision should be modified. The non-appealing party also is given an opportunity to respond to the arguments raised in the petition for review. This response must be filed within 15 days of receipt of the petition for review.The ALJ's decision becomes the final decision of the Department if it is not modified by the Secretary within 60 days after the recipient received the decision. The Secretary may simply let the time lapse without issuing a new decision, remand the case to the ALJ for further consideration of issues, or issue a new decision, which will be deemed the final decision of the Department.

The issuance of the final decision is not necessarily the end of your appeal rights. A recipient has the right to appeal the Department's final decision in Federal Circuit Court. The Federal Court is limited to review of the record developed through the Department's proceedings. In order to overturn the final decision of the Department, you must prove that the Department's final decision was arbitrary and capricious, an abuse of agency discretion, unsupported by substantial evidence, or in excess of statutory authority. The Federal Court will generally either uphold the final departmental decision or remand the case to the Department to reconsider the case in light of its interpretation of the law.

CHAPTER 9

KEY AUDIT CONCERNS

Although the audit process examines compliance with the many requirements discussed in this handbook, certain issues repeatedly arise. Where regulations are confusing in these areas, legal decisions have determined acceptable practices. This chapter discusses guidance offered in key audit cases related to **time and effort, non-supplanting, carryover funds, the statute of limitations, matching** and **maintenance of effort** requirements as well as the doctrine of **equitable offset** and the practice of **prorating allowances.**

Equitable Distribution

As explained in Chapter 6, employee personnel costs are allowable expenditures under the Perkins Act and federal accounting principles. However, when an employee's effort is allocated to two or more grant programs, or two or more objectives under Perkins (such as state administration and state leadership), you will be required to produce appropriate time distribution records that document what percentage of the employee's time was spent on each objective and what percentage on other activities. The records must produce an equitable distribution of time and effort. In recent years, the U.S. Department of Education has spent much time auditing and litigating the time distribution issue, especially addressing the type of records necessary to satisfy regulatory requirements.

Ideally, you should maintain hourly records showing exactly what activities each split-funded employee worked on in a given day. The administrative effort associated with such detailed record keeping, however, is often unmanageable. Therefore, alternatives to hourly or daily record keeping have been used, and many of the systems have been audited. As a result, a fairly recent body of administrative law provides guidance on the matter.

Contemporaneous Documentation

You may establish an equitable distribution of time and effort by constructing a time distribution format based on any credible evidence. Although daily activity reports are recommended, weekly or monthly time reports setting out the actual hours or percentage of time worked on the grant activity have been considered acceptable in some circumstances. These reports should be signed by both employees and their supervisors. Quarterly reports also have been considered sufficient, although they require particular caution.

In a key case, summarized in Appendix F(1), the State of Florida's vocational program used a time distribution system based on position funding reports and quarterly supervisor certifications. The position funding reports contained an estimated percentage of time each employee was expected to work on the federal vocational activity. At the end of each quarter employee supervisors issued notarized statements certifying that in the previous quarter the employee actually expended the estimated amount of effort.

Although the records in the Florida case were found to be sufficient, it would be risky to base time accounting on quarterly certification alone. The supporting supervisor and employee affidavits were key to the Florida decision. Your goal is to avoid the cost of litigation entirely by complying with audit requirements. Daily activity reports are best, weekly or monthly reports are safe and quarterly certifications may or may not be deemed acceptable. All reports should be contemporaneously signed by both employees and supervisors.

Formulas

Although auditors continue to disallow funding use when adequate time and effort records are lacking, the U.S. Department of Education's final decision makers have accepted formulas as valuable evidence in determining reasonable calculations of time and effort.

In a case arising out of the New York State Department of Education, the Education Appeal Board concluded that a fair and reasonable procedure for calculating time and effort in the absence of formal time distribution records is to divide coordination costs between state and federal funds. Therefore, for example, the ratio of the number of high school students assigned to the state programs versus the number assigned to the federal projects was considered a credible basis for calculating time and effort of teaching personnel.

Such decisions seem to reflect a USDE attitude that costs may be allocated to a particular grant objective to the extent that the project benefits. Federal decision makers have seldom completely disallowed costs as long as some sort of documentation demonstrates the federal project benefited and a reasonable formula can be reached to reflect employee time and effort on that project.

Note again that contemporaneous records will be given more weight than documentation developed after the fact or in preparation for litigation. Contemporaneous documentation may include activity reports, reports of field visits or any other time-based data. Employee work product may be considered. Most often evidence and testimony submitted by the grantee in support of time and effort is accepted as true unless USDE shows some contradictory evidence. It is often unable to do so.

Aggregation of Effort

It is permissible for the time of several employees working on grant activities to be allocated to a single employee's salary for grant-distribution purposes, according to a ruling summarized in Appendix F(1). Thus, if an office has three employees who each spend one-third time on federal program activities, it would be acceptable for one employee to be funded 100 percent with federal funds and the other two to be state-funded. This practice is considered an acceptable way to simplify bookkeeping procedures. All the employees must, however, keep complete time distribution records to document the total amount of benefit received by the grant project.

Supplement, Not Supplant

Federal grant funds must supplement and not supplant state or local funds. Federal funds may not result in a decrease in state or local funding that would have been available to conduct the activity had federal funds not been received. In other words, federal funds may not free up state or local dollars for other purposes but should create or augment programs to an extent not possible without federal dollars. You must be able to demonstrate that federal funds are added to the amount of state and local funds that would, in the absence of federal funds, be made available for uses specified in your plan.

For example, if you used Perkins funds to provide a vocational education service the local educational agency is required to provide under state or local law, supplanting would occur. In this circumstance, all federal funds used to carry out that service could be questioned by auditors. Generally, Perkins funds should not be used for an agency's general responsibilities.

Determining Supplanting

The critical question in determining whether there has been a supplanting violation is whether federal funds were used instead of funds from non-federal sources. You will have to show the federally funded activity would not have been funded by state or non-federal sources.

When auditors review compliance with non-supplant rules, they often use the following test: What would the recipient have done in the absence of the federal funds? If you would have carried out the project anyway with non-federal funds, there will be a presumption of supplanting. During the audit appeal process you would be required to submit evidence to disprove that presumption.

On the other hand, if the auditor were to find evidence that in the absence of those federal funds, you would **not** have carried out that specific activity or program, there would be no presumption of supplanting. As you can see, this is a very theoretical test, and one often not fully understood by auditors. It is worthwhile to truly educate auditors on the meaning of "supplanting."

Exception

The Perkins Act permits federal funds to supplant or displace non-federal funds **if** those federal funds are used to pay for vocational education services required in a student's individualized educational plan (required by the Education of the Handicapped Act) or are necessary to meet requirements (in the Rehabilitation Act of 1973) regarding equal access to vocational education.

However, the regulations provide that for expenditures to qualify for this exception, such "supplanted" expenditures must increase the amount of funds otherwise available. The broad language of this regulation would appear to nullify the exception. Further, U.S. Department of Education officials have indicated that for a recipient to avail itself of this supplanting exception, any funds supplanted must be put back into the program for services to disabled students.

Be extremely careful if you intend to use this exception to the non-supplant rule. Every time a displacement occurs, you will be required to demonstrate those displaced funds were in fact used for services for disabled students.

Carryover of Unexpended Funds

The Tydings Amendment to the General Education Provisions Act authorizes recipients to spend (technically, to "obligate") federal funds up to 27 months after the time they first become available. For example, FY 1992 funds became available July 1, 1991, and remain available through September 30, 1993. The Secretary's decision on the meaning of "obligation" under the Tydings Amendment is summarized in Appendix F(5). A related Appeal Board decision is included as Appendix F(6).

Statute of Limitations

The General Education Provisions Act contains a five-year statute of limitations. This means if more than five years elapse between the time you spend funds and the time you receive an audit determination letter disallowing such spending, the U.S. Department of Education may not recover the funds.

Appendices F(6), (7) and (8) address the application of the statute of limitations to Perkins expenditures. The Secretary has ruled that even in the absence of expenditure records, USDE has no basis to recoup federal funds if it has been more than five years since the funds would have lapsed.

You are required to retain all records for five years following the close of the grant period. If an expenditure is made on March 1, 1992, for example, its record should be retained until June 30, 1997. If an audit questions the expenditure, the record must be retained until the audit is resolved.

Matching

Under the previous Perkins Act, grant recipients were required to match several categories of federal funding with their own funds. Under the new law, matching is required only for state administrative costs. Since you may yet participate in an audit of previous Perkins spending, an awareness of matching issues may be helpful.

Both the current and former matching provisions require a 50 percent matching share. Costs charged to the non-federal matching funds also must meet all Perkins regulation requirements according to an Education Appeal Board decision summarized in Appendix F(2).

You generally may not use the value of in-kind contributions to satisfy the matching requirement. However, local contributions to projects, services and activities for the disadvantaged may be in-kind contributions to the extent you cannot provide the support in cash.

Review of Sample Expenditures

Auditors reviewing programs for compliance with matching requirements generally will review sample expenditures and related records to determine whether the federal and non-federal share of costs are in accordance with the matching requirements and will examine whether the claimed matching costs fulfill Perkins requirements.

Determining Proportionality

When reviewing compliance with matching requirements, auditors should consider whether any portion of federal funds were matched. For example, if a federal grant amount of $50,000 is spent on a project that requires a 50:50 match but you provided only $40,000 of non-federal funds, the full project should not be disallowed. However, you will be required to return the unmatched $10,000 in federal funds.

Maintenance of Effort

A state agency must be able to demonstrate that at least the same amount of non-federal funds was spent on the vocational program in the latest year as in the year before it unless this requirement is specifically waived by the U.S. Secretary of Education. The waiver, for only one fiscal year, may be made when exceptional or uncontrollable circumstances affect the state's ability to meet this requirement. Such circumstances might include natural disasters or an unforeseen and precipitous decline in financial resources.

Once a waiver has been granted for a given year, that year may not be used to determine maintenance of effort for following years. Instead, fiscal effort must be computed on the basis of the expenditure level that would have been required had a waiver not been granted. USDE may withhold a payment under the grant until maintenance of effort has been established or a waiver has been granted.

In reviewing a state's compliance with maintenance-of-effort standards, auditors will first ascertain whether the Secretary has granted a waiver. If not, the auditor will review the preceding and second preceding years' expenditures from state sources and determine if fiscal effort was maintained on either an aggregate or a per-pupil basis. See Appendix F(3) for a discussion of this ruling.

Equitable Offset

Although it is not an established requirement, recent decisions within the U.S. Department of Education and the federal courts have developed a growing doctrine of equitable offset. Under this doctrine any non-federal funds you spend to administer a Perkins-eligible project may be used to offset any funds you owe back to the government because they were improperly charged to the federal grant. Thus, allowable expenditures that were not charged to the Perkins project constitute an equitable offset that may cancel your debt for improper spending. If the equitable offset amount exceeds the amount you owe, however, there is no refund.

Equitable offset reflects a belief that if you implement a program furthering the Congressional educational goals, you should be given credit for doing so. Benefits thus received by the grant program need not have been previously charged to the grant, but they must be adequately documented.

For example, a state agency could have used vocational education funds under the previous Perkins Act to cover up to 50 percent of the cost of administrating the approved state plan as long as this amount for state administration did not exceed 7 percent of the total grant. If instead it paid for these services with state funds, the state would be entitled to an equitable offset if a portion of the federal grant were disallowed.

In a recent case concerning New York's administration of its vocational education program, summarized in Appendix F(9), the U.S. Secretary of Education determined the doctrine of equitable offset applies when state educational services that support the legislative intent are actually performed, even though not originally charged to the appropriate federal grant. In that case the auditors disallowed several salary payments charged to the vocational education grant but not supported with adequate documentation. At the same time the auditors found several salary payments that could have been charged to the federal grant but were not so charged. The auditors determined these salary costs reflected actual grant project effort, yet USDE's final audit determination demanded repayment of the entire undocumented amount. After protracted litigation, the Secretary established that the regulations allocate federal education grant funds based on whether services are performed for grant-related purposes, rather than on how expenditures are initially charged. This upholds the premise of equitable offset.

Auditing of Offset Expenses

A strong argument for equitable offset may be made even if the expenses offered for offset were not reviewed in the relevant audit. The fact that data offered to offset liability may not have been specifically identified by the auditors does not limit the acceptability of that data for offset purposes. You must present some documentation to demonstrate that proposed expenses were actually incurred and paid with non-federal funds for allowable expenditures under the relevant federal grant. Clearly, undocumented or unjustified expenses may not be offset by other undocumented expenses. However, the relevant documentation need not have been reviewed at the time of the audit.

These principles are supported by a case involving the Florida Department of Education, which is included in Appendix F(1). It demonstrated that state administration spending was sufficient to offset the entire purported liability even though the nonfederal expenditures had not been audited at the time of the original audit. All state salary expenditures submitted by Florida to support its offset argument were identified for offset purposes after the underlying audits were completed. Even though the auditors did not examine offset salaries exclusively charged to state funds, those salaries were accepted for offset purposes. The state's evidence set forth the amount it had spent in the relevant fiscal years and the amount charged by the state to the Perkins grant. Despite the fact the documentation was neither audited nor verified as accurate by a chief state officer, it was accepted as the most reliable source for determining state expenditure amounts.

Imputed Expenses

The federal courts have supported crediting grantees with imputed expenses—those that may be attributed as benefiting the grant project's goals. Thus, expenses not technically allowable under the grant may have provided some benefit to the grant program that would have been partially allowable.

For example, a school held a conference at a convention center rather than on school property. Although the cost of the convention center may not be considered necessary and reasonable under the controlling regulations, the convention itself would have been allowable if held at the school. Therefore, the imputed expenses that would have been incurred if the convention had been held at the school—such as janitorial and heating costs—could be offset against the full disallowance. Similarly, the courts have given grantees offset credit to compensate for intangible benefits incurred to the grant program even though the overall expense was not allowable.

Prorated Allowances

Federal courts have held that the U.S. Department of Education must give recipients credit for any benefits provided to a federal program. Therefore if, for example, only 60 percent of the students who received benefits under a particular grant project were eligible for that program, USDE would not be justified in demanding repayment of the entire grant amount. Such an all-or-nothing approach has been rejected by the federal courts because, at least with respect to some students, the expenditures furthered the Congressional goal. The recipient should be given a credit for the sums expended on eligible students, including teacher training and related matters, and a reasonable proration of attributable systemwide costs.

CONCLUSION

Despite its complexity, the process of avoiding Perkins audit difficulties can be summarized in four steps—

(1) develop a project that fulfills all related federal requirements;

(2) conduct that project in accordance with your approved plan and the requirements;

(3) keep records documenting why all expenditures are appropriate;

(4) work with an auditor to verify the propriety of your use of funds.

Each step involves several painstaking procedures, as explained in this handbook. Yet the audit process can be viewed not as a punishment but as an opportunity to show your goal in using Perkins funds is consistent with the goal of Congress in making them available—to provide top-quality vocational education to those needing it most.

GLOSSARY

Most terms are defined in the sections where they appear, but you may want to keep the following definitions in mind:

"A-128 audit"
An annual audit of local Perkins spending as described in the Office of Management and Budget's Circular A-128

"Assistant Secretary"
Assistant Secretary for the Office of Vocational and Adult Education, U.S. Department of Education

"audit exception"
An auditor's determination that you have not followed proper procedures or fulfilled all Perkins requirements

"basic grant"
Federal funds authorized by Title II of the Perkins Act of 1990

"CFR"
The *Code of Federal Regulations*, where many of the regulations cited in this manual are published

"correctional institution"
A prison, jail, reformatory, work farm, detention center, halfway house, community-based rehabilitation center or other similar institution designed for the confinement or rehabilitation of criminal offenders

"disadvantaged"
individuals, other than those with handicaps, who have economic or academic disadvantage and who require special services and assistance to succeed in vocational education programs. This includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school

""""economically disadvantaged"
families or individuals who are determined by the Secretary to be low-income according to the latest available data from the Department of Commerce

"eligible recipient"
a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a state corrections educational agency, or an eligible institution (as such term is defined in section 232(d)(1))

"equitable offset"
the federal government's practice of forgiving repayment for inappropriately spent Perkins

funds when you can show non-federal funds were used for Perkins purposes, therefore offsetting the inappropriate use

"local application"
document detailing plans for a Perkins project that must be approved by the state agency before grant funds are received

"local educational agency"
a board of education or other local school authority having administrative control of public elementary or secondary schools or any other public educational institution or agency having administrative control and direction of a vocational education program

"matching"
requirements that when federal funds are spent in a particular area the same amount of non-federal funds must also be spent

"non-supplanting"
the requirement that federal funds be used to supplement, not supplant (take the place of), funds from other sources

"postsecondary educational institution"
an institution legally authorized to provide postsecondary education within a state, a Bureau of Indian Affairs controlled postsecondary institution, or any postsecondary institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934

"program"
an entire vocational system including activities supported by federal and non-federal funds

"program area"
a vocational discipline such as industrial, business, marketing, agriculture, business, health, home economics, technical or trades

"project"
a federally funded activity

"school facilities"
classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed; does not include a facility intended primarily for events for which admission is to be charged to the general public

"Section 235"
the part of Title II in the Perkins Act that prescribes the limits for use of basic grant funds

"Secretary"
U.S. Secretary of Education

"sequential course of study"
an integrated series of courses that are directly related to the educational and occupational skill preparation of individuals for jobs, or preparation for postsecondary education

"site"
place where a vocational education program takes place—the building, school or campus

"special populations"
individuals with handicaps, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions

"state educational agency"
the state board of education or other agency primarily responsible for the state supervision of public elementary or secondary schools

"supplementary services"
modification of the curriculum, equipment or classroom, supportive personnel and instructional aids and devices

"tech-prep"
combined secondary and postsecondary programs that lead to an associate degree or two-year certificate and to employment

"USDE"
U.S. Department of Education

"vocational education"
organized educational programs offering a sequence of courses directly related to the preparation of individuals for employment in occupations requiring other than a baccalaureate or advanced degree. Such programs include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills and the occupational-specific skills necessary for economic independence as a productive member of society. Also includes applied technology education.

Appendix A

Proposed Regulations for the 1990 Carl D. Perkins Vocational and Applied Technology Education Act

34 CFR Part 400 et al

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN 1830-AA08

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Proposed rule.

SUMMARY: The Secretary proposes to issue regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended by Public Law 101-392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

DATES: Comments must be received on or before December 10, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 732-2237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, Chairperson, Vocational Education Regulations Taskforce, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue SW., Washington, DC 20202-7120. Telephone: (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), which was enacted on September 25, 1990, amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)). Furthermore, technical amendments to the Act were made by Public Law 102-103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through Fiscal Year 1995.

The Act makes several significant amendments to redirect Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in vocational education, and must give priority for assistance to limited numbers of sites or programs that serve the highest concentrations of special population members.

Subject to these requirements for services to special population members and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under title II, part C of the Act must annually evaluate the effectiveness of its vocational education program and, in cases where substantial progress is not made toward meeting these standards and measures, implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for special population members in order for this Nation to achieve the goal of making every adult American able to compete in the workplace (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 1). Increased integration of vocational and academic education can contribute to the National goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs. The regulations implementing the major changes to the provisions of the State program are discussed below in greater detail. In addition to the State Vocational and Applied Technology Education Programs, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

Regulatory Development

Section 504(a) of the Act required the Secretary to convene regional meetings to obtain public involvement in the development of proposed regulations to implement the Act. Section 504(a) also required the Secretary to prepare draft regulations implementing the Act and to submit regulations on at least two key issues to a negotiated rulemaking process.

The Department of Education (Department) has taken numerous steps in addition to those required by section 504 of the Act to involve members of the public, especially representatives of special populations, in the development of the proposed regulations. Section 504(b) of the Act required the Secretary to select at least four key issues concerning the implementation of the Act for discussion at regional meetings. In order to determine which issues would be most appropriate for discussion, the Department held meetings with representatives of national associations interested in vocational education, to seek advice on the regulatory issues to be presented at the regional meetings. The Department carefully considered the concerns raised by these groups in selecting the issues for the regional meetings.

In order to ensure the widest, most informed participation in the regional meetings, the Department asked State and national associations, State agencies, the State directors of vocational education, and the State directors of community colleges to nominate individuals to represent them at the regional meetings. Through this process, the Department received approximately 1200 names, 200 of which were of individuals involved with special populations, and invited each of these individuals to participate in the regional meetings. In addition, the Department published a notice of the regional meetings in the **Federal Register.**

From October 29, 1990, through November 15, 1990, the Department held regional meetings in four cities, at which the total attendance exceeded 800 participants. In the course of each meeting, the Department led discussions in four areas including a total of 21 regulatory issues. A summary of the issues discussed at the regional meetings and the information received on these issues is contained in appendix B of these proposed regulations.

After the regional meetings, the Department selected negotiators to participate in the negotiated rulemaking. Section 504(b) of the Act required that the Department select at least ten negotiators from participants in the regional meetings, representing several groups, including special populations. Section 504(b) of the Act also required the Department to ensure that the ten regions were represented at the negotiated rulemaking. Using forms completed by the participants at the regional meetings, the Department selected 13 negotiators from outside of the Department who met the statutory criteria and who, on the basis of the quality of their participation at the regional meetings, the Department believed would be informed and effective negotiators.

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17–18, 1990. Fourteen negotiators, including the 13 negotiators chosen from outside the Department and a negotiator representing the Department, participated in the negotiated rulemaking. Negotiations were held on eight regulatory issues in three areas: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. The individual regulatory issues negotiated and the decisions reached or other recommendations made by the negotiators are summarized in appendix C to these proposed regulations.

Both participants in the regional meetings and negotiators at the negotiated rulemaking have requested that the regulations accord a State and its eligible recipients the most flexibility possible to address particular State or local needs in vocational education. In response to these requests, the Secretary has used examples to show how a State or other recipient under the Act may comply with certain statutory requirements wherever possible in the proposed regulations. The examples are contained in either the text of the proposed regulations or in appendix A to the proposed regulations. While not foreclosing a State or local recipient's flexibility to develop other reasonable interpretations of the statutory requirements, the examples provide an interpretation that the Secretary considers to be in compliance with the Act. However, the Secretary urges all States and other recipients to strive for improvements in vocational education beyond the requirements of the Act, especially with respect to the requirements for participation of special population members.

Summary of Major Provisions

(1) *General Provisions (Part 400)* (a) *"Coherent sequence of courses."* Section 235(c)(1)(B) of the Act requires recipients to use funds for vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240(11)(B) and (12)(A) (local application). Section 400.4(b) defines this term in order to clarify that under vocational and applied technology education programs, competency-based education, academic education, and adult training or retraining are permissible if they directly relate to, and lead to, both educational and occupational competencies.

The Secretary submitted the draft regulation defining "coherent sequence of courses" to negotiated rulemaking, and the negotiators agreed to the revised definition contained in § 400.4(b) that more closely tracks the statutory requirements. While the definition does not specifically include a single course, the Secretary agrees with the negotiators that the definition of "coherent sequence of courses" would include sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition.

(b) *"Economically disadvantaged family or individual."* Section 521(16) of the Act defines "economically disadvantaged family or individual" to mean those families or individuals who are determined by the Secretary to be low-income under the latest available data from the Department of Commerce. Section 400.4(b) defines this term to include any family or individual who is eligible for certain benefits or services. The qualifying benefits or services and other factors included in § 400.4(b) are those to be used by a State board in determining the number of economically disadvantaged students for purposes of allocations under § 403.114(a). Although the regulations in §§ 400.4(b) and 403.114(a) include participation under the National School Lunch Act (42 U.S.C. 1751 *et seq.*), in accordance with the requirements of that program, the Secretary wishes to emphasize that participation under this program may not be used as a basis for identifying a particular family or individual as economically disadvantaged.

(c) *"Individuals with disabilities."* The Act uses the terms "individuals with disabilities" and "individuals with handicaps" interchangeably. For sake of clarity, the proposed regulations use only the term "individuals with disabilities," and § 400.4(b) defines this term.

(d) *Requirement concerning a State committee of practitioners.* Section 115 of the Act requires the State board to convene a State Committee of Practitioners (Committee) to review, comment on, and propose revisions to the State draft proposal for a statewide system of core standards and measures of performance (§ 400.7). Section 115 also requires that the Committee be appointed as prescribed by section 512(a) of the Act after consultation with certain groups (§ 400.6). Section 512(a) of the Act requires that the membership, which is selected from nominations solicited from other specific groups, consist of representatives of seven groups, the majority of whom are representatives of local educational agencies. Section 400.6(c)(2) clarifies that a State may count school administrators, teachers, and members of local boards of education in determining whether a majority of the Committee membership represents local educational agencies. Section 512(a) of the Act further requires that a State submit for the Committee's review any proposed or final State rule or regulation under the Act. Section 400.7(b) clarifies that a State is required to submit for the Committee's review a State policy that would be binding on eligible recipients and that would have the same effect as a formal rule or regulation even if it would not be issued as one.

(e) *Reporting requirements.* One of AMERICA 2000's major themes is that communities and schools should be accountable for improving the effectiveness of the educational programs they administer. As a corollary responsibility, the Department is increasing the accountability of projects it funds thereby ensuring that demonstration and training projects better contribute to the improvement of education. This approach is designed to increase the number of instructional approaches, materials, and techniques for providing vocational education that are submitted to and approved by the Department's Program Effectiveness Panel and subsequently made available to practitioners. To implement this strategy, § 400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational and Applied Technology Education Programs. Appendix D contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirement in § 400.10. The information in appendix D is provided with these proposed regulations to make applicants aware of the new standards for accountability that must be taken into account while the applicant is designing a project, developing an application, identifying staff, budgeting for activities, and planning evaluation activities. The Secretary is particularly interested in receiving comments on the type of information that will be collected under appendix D.

(2) *Indian Vocational Education Program (part 401).* The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians. These regulations establish eligibility requirements (§ 401.2), selection criteria for evaluating applications (§ 401.21), and evaluation requirements (§ 401.31). These regulations also establish conditions under which projects may provide stipends for students who have acute economic needs that cannot be met under work-study programs (§ 401.3 (c) and (d)).

(3) *Native Hawaiian Vocational Education Program (part 402).* The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of native Hawaiians. These regulations establish eligibility requirements (§ 402.2), and selection criteria for evaluating applications (§ 402.21).

(4) *State Vocational and Applied Technology Education Program (part 403)* (a) *State requirements.* In developing the State plan, the State must conduct an assessment of program quality, consult with the State council, and conduct public hearings (§ 403.31).

The State plan must contain a variety of new assurances and descriptions. For example, these include an assurance that the State board will annually assess, and include in the State plan a report on, the degree to which expenditures for guidance and counseling from the State's allotments under title II of the Act are not less than expenditures for guidance and counseling in fiscal year 1988 and assurances regarding the Business-Labor-Education Partnership for Training Program (§ 403.32(a)). The new required descriptions include, for example, a description of the procedures and results of the State assessment and of how funds will be used to reflect the needs identified in the assessment, and a description of how funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis (§ 403.32(b)). With respect to § 403.32(a)(5), the Secretary encourages States and local recipients to consult with representatives from private secondary schools regarding the participation in vocational education of members of special populations enrolled in private secondary schools.

Section 114 of the Act no longer explicitly requires a State to submit its State plan for review and comment to the State Job Training Coordinating Council under section 122 of the Job Training Partnerships Act (JTPA) (29 U.S.C. 1501 *et seq.*) and to the State council on vocational education at least sixty days before submission of the State plan to the Secretary. However, the Secretary believes that other provisions in the Act support the continuation of the requirement for review. Specifically, section 113(c) of the Act continues to require that State plan amendments be submitted for review and comment by the State Job Training Coordinating Council and the State council; section 112 (d)(2)(A) and (e) of the Act authorizes the State council to make recommendations on the State plan and to submit a statement to the Secretary reviewing and commenting on the State plan; and section 113(b)(14) of the Act continues to require joint planning and coordination with programs conducted under the JTPA. Therefore, § 403.33 continues the requirement that the State plan be reviewed by both councils.

Section 111 of the Act imposes new requirements for the review of local applications by the "sex equity coordinator," the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), the head of the State office or other appropriate individual responsible for coordinating services under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1) (20 U.S.C. 2700 *et seq.*), and the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency (§§ 403.13 through 403.18).

(b) *Special populations.* The Act imposes many new requirements for ensuring that members of special populations are given equal access to, and allowed full participation in, vocational education. Section 506 of the Act makes clear that no provisions of the Act should be construed as inconsistent with Federal laws guaranteeing civil rights (§ 400.9(b)). Section 400.9(b) emphasizes that the Act does not in any way limit the rights of special population members accorded by other Federal laws, for example, rights of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA) or section 504 the Rehabilitation Act of 1973 (section 504) (29 U.S.C. 794).

Section 118(a) of the Act requires the State board to make broad assurances in its State plan that members of special populations will be given equal access to vocational education (§ 403.32(a)(18)-(26)). These assurances provide that special population members will be afforded equal access to the full range of vocational education programs available to members of the general population, including recruitment.

enrollment, and placement activities. The assurances also require monitoring of the provision of vocational education to disabled and disadvantaged students and to students of limited English proficiency. The Secretary interprets the assurances in § 403.32(a)(18) through (26) as applying to the entire vocational education program operated by the State and its recipients. (See also § 403.190(d).) Because equal access is necessary for a student to enroll in a vocational education program as well as for a student to enroll in specific vocational education courses, the Secretary does not believe it is possible or appropriate to limit application of this requirement to students in specific projects, services, and activities that are funded under the Act. This limitation also would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for special population members.

Further, the Secretary believes that the broad application of the assurances required by section 118(a) of the Act reinforces requirements imposed under other Federal statutes, including the IDEA and section 504. The Secretary also believes that the reference in section 118(a)(3)(C) of the Act to both students who are protected by the IDEA and students who are protected by section 504 is for the purpose of emphasizing that disabled students who do not have individualized education programs under the IDEA must be included in the required assurances because of protections under section 504. The Secretary does not agree with any implication that a student eligible to have an individualized education program under the IDEA would not be protected under section 504 as well.

Section 118(b) of the Act requires local educational agencies to provide information to students who are members of special populations and their parents concerning vocational education, including opportunities, eligibility, courses, special services, employment opportunities, and placement, at least one year before a student is old enough to enter vocational education (§ 403.193). Section 118(b) of the Act also requires an eligible institution receiving funds under Title II to provide the same information when requested. Section 403.193 interprets section 118(b) of the Act as applying to eligible recipients or institutions receiving funds under Title II of the Act. Section 403.193(a)(2) extends the requirement to provide information to special population members and their parents to an area vocational technical school or an intermediate educational agency that receives the entire allocation of a local educational agency. Additio[illegible]y, § 403.193(e) clarifies that a local recipient is only required to provide this information to the extent possible with funds awarded under the Act.

The Secretary submitted for discussion at the negotiated rulemaking the issues of the required source of funding and of extending this requirement to area vocational technical schools and intermediate educational agencies. The negotiators reached a consensus on the language of the draft regulations insofar as it would extend the requirement to provide information to area schools and intermediate agencies. However, the negotiators did not reach agreement concerning the required source of funding for providing this information.

Section 118(c) of the Act requires each eligible recipient under Title II of the Act to make broad assurances in its local application that members of special populations will receive supplementary and other services necessary to succeed in vocational education (§ 403.190(b)). In particular, this includes an assurance that an eligible recipient under title II of the Act will assist in fulfilling the transitional services requirements of section 626 of the IDEA. In this regard, eligible recipients should note that section 614 of the IDEA has been amended so that it also requires transitional services for students aged 16 years or older as a component of their individualized education programs.

Section 403.190(b) interprets the assurances concerning the provision of supplementary and other services to apply only to members of special populations enrolled in projects, services, and activities that are funded under the Act. Further, § 403.190(b) also interprets section 118(c) of the Act as requiring an eligible recipient to provide supplementary and other services for those students only to the extent possible from funds received under the Act. The Secretary bases this interpretation on the lack of any legislative history or other indication that Congress intended to create an individual entitlement for special populations members and a corresponding financial obligation on a State or its local recipients similar to that imposed under the IDEA. However, while § 403.190 does not interpret section 118(c) as establishing an individual entitlement for members of special populations, the Secretary wishes to emphasize that neither § 403.190 nor section 118(c) of the Act in any way limits the rights and entitlement to services of special population members under other Federal laws, for example, the IDEA and section 504, nor does either § 403.190 or section 118(c) of the Act limit the financial obligation of a State or local recipient to provide these services under any other Federal law.

Both issues—the scope of the requirements imposed by section 118(c) of the Act and the source of funding to meet those requirements—were discussed in the negotiated rulemaking. However, the negotiators were not able to reach consensus on either issue. Because of the importance of providing services to special population members under the Act, and because the negotiators were unable to reach consensus on so many issues related to these services, the Secretary particularly invites further comments on these provisions. Of particular interest are: (1) Whether the obligations of a State and its local recipients to meet the requirements related to providing information and supplementary services to special population members should extend to funds other than those awarded under the Act; and (2) whether the requirements of section 118(c) of the Act should apply to projects, services, and activities funded under title II of the Act, to those funded under titles II and III of the Act, or to the local recipient's entire vocational education program (including specific projects, services, and activities not funded under the Act).

(c) *State assessment.* Section 116 of the Act requires a State to assess the quality of its vocational education program using measurable objective criteria. Section 403.203(f)(2) interprets section 116 of the Act as requiring a State assessment during each State plan cycle.

(d) *Evaluation requirements.* Section 115 of the Act requires a State to develop a statewide system of core standards and measures of performance for secondary and postsecondary vocational education programs (§ 403.201). Section 117 of the Act requires a recipient of financial assistance under title II, part C of the Act to use the standards and measures developed under section 115 of the Act to evaluate the effectiveness of the program conducted with assistance under the Act (§ 403.191). In cases where substantial progress is not made toward meeting these standards and measures, a local recipient must implement a local program improvement plan, and, if the local plan is not successful, a State and local recipient must develop a joint plan for improvement.

Section 403.201 applies the requirement under section 115 of the Act to develop a statewide system of core standards and measures of performance to a State's entire vocational education program, regardless of which particular projects, activities, and services are funded under the Act. Similarly, § 403.191, requires a recipient of funds under title II, part C of the Act to use these statewide standards and measures to evaluate annually the effectiveness of its entire vocational education program and not simply those projects, services, and activities funded under the Act. This is appropriate because funds awarded under the Act may be used jointly with State and local funds or for isolated costs such as equipment. In addition, the Act contemplates that the funds awarded under the Act will be provided for limited sites or program areas that will change from year to year. Therefore, the Secretary does not believe that it would be possible to measure annually the effectiveness of only projects, services, and activities funded under the Act.

The Secretary submitted the issue of the scope of the local evaluation required under section 117 of the Act for discussion in the negotiated rulemaking proceedings, but the negotiators were not able to reach a consensus. Therefore, the Secretary is particularly interested in receiving further comments on this provision, including whether an effective local evaluation could be performed using sampling techniques or other techniques designed to phase in the evaluation requirement, or whether other means exist to increase a local recipient's flexibility in evaluating its vocational education program.

(e) *Within-State allocation.* Section 102(a) of the Act establishes the percentage of a State's allotment that must be reserved for each program under title II of the Act (§ 403.180). Section 102(c)(1) of the Act establishes a "hold-harmless" provision for the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program to ensure that the funds reserved for each of these programs at least equal the amount the State "reserved for each such program in fiscal year 1990." Section 403.180(a)(1)(i) interprets the phrase "reserved for each such program in the fiscal year 1990" as meaning the amounts reserved for these programs under the percentage set-aside requirements of section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA).

Section 102(c)(2) of the Act establishes a "hold-harmless" provision for the Program for Criminal Offenders to ensure that the funds reserved for that program equal the amount the State "expended under this Act for such program for the fiscal year 1990." (See Pub. L. 102–103, 105 Stat. 497 (1991), amending section 102(c) of the Act). While section 102(c)(2), as amended by Public Law 102–103, is not entirely clear, we believe that Congress' purpose was to increase the amount of funds to be reserved for the Program for Criminal Offenders above the one percent that a State was required to reserve under section 202(6) of CDPVEA. Therefore, § 403.180(a)(1)(ii) interprets the phrase "expended under this Act for such program for the fiscal year 1990" as meaning the amount the State reserved for projects, services, activities under section 202(6) of the CDPVEA and any other Federal funds under the CDPVEA, in excess of the one percent reserve under section 202(6), that the State and eligible recipients obligated for projects, services, or activities for criminal offenders in correctional institutions.

Section 403.180(c) requires a State first to reserve the amount necessary to satisfy the $250,000 minimum for State administration under section 102(a)(4) of the Act and the amounts for programs not meeting the "hold-harmless" requirements under section 102(c) of the Act, and then ratably reduce the funds available for the remaining programs. In no case in this process could a program subject to the "hold-harmless" requirements be reduced to less than the amount reserved for such a program in Fiscal Year 1990.

(f) *Distribution requirements for secondary, postsecondary, and adult funds.* Sections 231 and 232 of the Act impose requirements concerning the distribution of funds reserved by the State for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs, respectively. Section 231 of the Act requires that secondary funds be distributed to local educational agencies in accordance with a statutory formula, and allows those funds to be distributed to an area vocational education school or an intermediate educational agency if that entity has entered into a consortium with a local educational agency for the purpose of receiving these funds (§§ 403.112 and 403.113). Section 232 of the Act requires that postsecondary and adult funds be distributed to eligible institutions based on the relative number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs of the eligible institution (§ 403.116).

Under §§ 403.112 and 403.116, the statutory formulas would be applied using the required funding and enrollment figures from the fiscal year or program year preceding the year in which the funds are allocated—not the year in which the funds are distributed. While the statutory formulas are ambiguous as to what fiscal or program year is to be used as a point of reference for determining the "preceding" year, this interpretation is consistent with the use of enrollment figures in the statutory formulas in section 203 of the Carl D. Perkins Vocational Education Act. Therefore, given the lack of any legislative history or other indication of Congressional intent to the contrary, the regulations continue the past practice concerning the use of enrollment figures.

Section 231(b) of the Act imposes a $15,000 minimum grant requirement under the Secondary School Vocational Education Program, but permits a State to waive the application of the minimum grant requirement under certain circumstances. Section 231(b) of the Act also permits a local educational agency to enter into a consortium with one or more local educational agencies in order to meet the minimum grant requirement. However, the Secretary does not believe that Congress intended for local educational agencies to form consortia merely for the purpose of allowing members to receive an allocation of funds in alternate years. Therefore, under § 403.112(d), a consortium formed for the purpose of meeting the minimum grant requirement would be required to serve primarily as a structure for operating joint projects that provided services to all members of the consortium. Section 403.112(d) also makes clear that a consortium would be subject to the size, scope, and quality requirements of § 403.111(c)(1).

Section 232 of the Act also imposes a $50,000 minimum grant requirement under the Postsecondary and Adult Education Vocational Education Programs. In contrast to section 231 of the Act, section 232 of the Act does not permit eligible institutions to form consortia for the purpose of meeting this requirement. Although the Department has received requests that the regulations permit the use of consortia for this purpose, § 403.116(c) would not allow eligible institutions to form consortia to meet the minimum grant requirement.

Section 232 allows the Secretary to waive the requirements of the postsecondary and adult funding formula upon a State's application for a waiver if the application demonstrates that the use of the statutory formula would not result in the distribution of funds to institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula proposed by the State in its application would achieve this result. Section 403.118 establishes the rules under which the Secretary will grant a waiver of the postsecondary and adult formula.

(g) *Use of funds.* Section 235 of the Act requires recipients of funds under title II, part C of the Act to use those funds to improve vocational education programs, with the "full participation" of individuals who are members of special populations, at a limited number of sites or with respect to a limited number of program areas (§ 403.111(a)(2)(i)). Section 235(b) of the Act requires a recipient to give "priority" for assistance to sites or programs that serve the highest concentrations of individuals who are members of special populations. Section 235(c) of the Act sets forth requirements that apply to the vocational education programs in which funds awarded under the Act are used. Specifically, section 235(c)(1) of the Act requires that funds be used in programs that are of sufficient size, scope, and quality as to be effective; that integrate academic and vocational education; and that provide "equitable participation" for special populations (§ 403.111(c)).

The Secretary submitted to negotiated rulemaking the issues of how "full participation" and "equitable participation" should be interpreted and the issue of how a recipient could give priority to a limited number of sites or program areas. The negotiators reached consensus on all these issues, and those agreements are reflected in the proposed regulations or in examples contained in appendix A to these regulations, as discussed below, and in greater detail in appendix C to these regulations. The Secretary believes that the use of examples to interpret statutory requirements maximizes a local recipient's flexibility and particularly invites suggestions for additional examples.

Section 403.111(a)(2)(i) interprets "full participation" as requiring that members of special populations be provided with supplementary and other services necessary for them to succeed in vocational education. Section 403.111(b) repeats the statutory language requiring that priority be given to a limited number of sites or program areas that serve the highest concentrations of special population members and provides three examples of ways to give priority. Under the examples, an eligible recipient would give priority by first establishing a funding cut-off point and then funding sites or programs from among those that are above the cut-off point and that are otherwise eligible for support under the Act. The third example was added by the negotiators to illustrate a way of providing new and better opportunities in vocational education for special population members. The proposed regulations also repeat the statutory language requiring "equitable participation" in § 403.111(c)(3) and provide two examples of providing "equitable participation" in appendix A. The negotiators agreed to delete the explanatory language from the draft regulation submitted to negotiated rulemaking and to place the examples in an appendix to the regulations.

(h) *Supplanting prohibition.* Section 516(a) of the Act continues the requirement from the previous act that funds available under title II be used to supplement, and to the extent practicable increase, the amount of State and local funds that would in the absence of the Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant State and local funds. However, section 516(a) of the Act provides an exception to the supplanting prohibition to allow funds under the Act to be used to pay for the costs of vocational education services required in an individualized education program developed pursuant to the IDEA, and for services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 (section 504) with respect to ensuring equal access to vocational education. Sections 403.196 and 403.208 clarify that the limited purpose of this provision is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the cost of the individualized education program or of meeting the requirements of section 504.

(i) *Comparability.* Section 113 of the Act requires a State to include in its State plan assurances that State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in that agency that are not receiving funds. Section 403.194 interprets sections 113 of the Act as requiring comparability between secondary schools or sites served with Federal funds awarded under the State plan and secondary schools or sites that are not being served with Federal funds awarded under the State plan. Moreover, § 403.194 provides three examples of methods by which a local educational agency can demonstrate its compliance with the comparability requirements and requires a local educational agency to develop written procedures for complying with the comparability requirements. Section 403.200 requires a State to monitor each local educational agency's compliance with the comparability requirements and, if a local educational agency is found not to be in compliance, to withhold, or require repayment of, the amount or percentage by which the local educational agency failed to achieve comparability. The Secretary is particularly interested in receiving comments on whether, in determining comparability—

(1) State and local agencies should compare services provided in vocational education programs or services provided in secondary schools or sites; and

(2) The examples of methods by which an LEA can demonstrate its compliance with comparability requirements are appropriate for measuring comparability under the Act.

(j) *Fiscal requirements.* Under § 403.186, a State may use a necessary and reasonable amount of funds from its individual allotments for the special programs under title III of the Act, in addition to the funds reserved for State administration under title II of the Act, to administer those specific programs unless the Act provides otherwise with respect to a particular special program. Under § 403.187, a State also may use a necessary and reasonable portion of the funds reserved for each basic or special program under the State plan (other than the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs), in addition to the funds reserved for State administration under title II of the Act and for State leadership, to pay the costs of providing technical assistance necessary to enhance the quality and effectiveness of that specific program.

The Act is silent concerning an eligible recipient's use of funds awarded under the Act for local administrative costs, with two exceptions. Section 235(c)(4) of the Act limits the use of funds for local administrative costs to five percent under the Secondary Schools and Postsecondary and Adult Education Programs, and section 333(c) of the Act limits total expenditures for administrative costs of the State board and eligible partners under the Business-Labor-Education Partnership for

Training Program to not more than 10 percent of the State's allotment in the first year and five percent of that allotment in each subsequent year. Under § 403.195, an eligible recipient may use a necessary and reasonable amount of funds from its awards under the basic programs and the special programs, except for the two particular exceptions discussed above, to administer its projects.

The Secretary believes that the "necessary and reasonable" cost principle is implicit in the statute and is consistent with government-wide cost principles (see Office of Management and Budget Circular No. A-87 incorporated by reference in 34 CFR 80.22(b)) and well established Departmental practice under the Carl D. Perkins Vocational Education Act. Therefore, the Secretary has extended this principle in the proposed regulations, where it is not inconsistent with the Act, to allow for necessary and reasonable administrative costs in new programs authorized by the Act and for necessary and reasonable costs of technical assistance. In view of this, the Secretary invites comments on the use of the "necessary and reasonable" cost principle in §§ 403.186(b)(2), 403.187, 403.195, and 406.31.

(5) *National Tech-Prep Education Program (part 405).* The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and that provide, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions. These regulations establish eligibility requirements (§ 405.2), selection criteria for evaluating applications (§ 405.21), and evaluation requirements (§ 405.30).

(6) *State-Administered Tech-Prep Education Program (part 406).* When the annual appropriation for tech-prep education exceeds $50,000,000, the program becomes State-administered, with each State receiving a grant based on a statutory formula. The State-administered Tech-Prep Education Program provides financial assistance for planning and developing—

(a) Four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) In a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

In order to be eligible for an award under this program, a State board of vocational education must include several descriptions in its State plan (§ 406.10). The Secretary strongly encourages the State board to submit to the State agency responsible for postsecondary education for review the portions of the State plan that will implement this program.

The Secretary determines the amount of each State's allotment according to the formula in section 101(a)(2) of the Act (§ 406.20). These regulations describe how a State carries out its grant, including the use of funds for State administration and technical assistance (§ 406.31), members of consortia who are eligible to apply to the State for an award (§ 406.30), the requirements for local applications (§ 406.32), and the reporting requirements (§ 406.33).

(7) *Supplementary State Grants Program (part 407).* The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act. To receive an award under this program, a State must include in its State plan the information in § 407.10. In addition, these regulations describe allowable activities (§ 407.3), the formula for distributing funds to State agencies (§ 407.20), and eligibility and application requirements for local educational agencies (§§ 407.30 and 407.32).

(8) *Community Education Employment Centers Program (part 408).* The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

These regulations describe eligible applicants (§ 408.2), requirements regarding support services, parental, and community participation (§§ 408.30 through 408.32), and evaluation requirements (§ 408.34).

(9) *Vocational Education Lighthouse Schools Program (part 409).* The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools. These regulations describe the eligible applicants (§ 409.2), allowable activities (§ 409.3), criteria for evaluating applications (§ 409.21), and evaluation requirements (§ 409.30).

(10) *Tribally Controlled Postsecondary Vocational Institutions Program (part 410).* The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions (§ 410.1). For institutional support grants, the regulations describe eligible applicants (§ 410.2), allowable activities (§ 410.3), and requirements regarding the content of applications (§ 410.10). These regulations exclude tribally controlled community colleges, as defined in 34 CFR 400.4, from the definition of tribally controlled postsecondary vocational institutions (§ 410.5). In addition, the regulations do not implement the provisions in section 389(c) of the Act which provides for construction and renovation grants. The Secretary is studying the desirability and need for regulations to implement these provisions and may develop regulations for them at a later date.

(11) *Vocational Education Research Program (part 411).* The Vocational Education Research Program provides financial assistance for applied research projects. These regulations describe eligible activities (§ 411.3), selection criteria for evaluating applications (§ 411.21), and provisions governing unsolicited applications (§§ 411.23 and 411.24).

(12) *National Network for Curriculum Coordination in Vocational and Technical Education (part 412).* The National Network for Curriculum Coordination in Vocational and Technical Education is a system of six curriculum coordination centers (CCCs) that disseminate information resulting from research and development activities carried out under the Act in order to ensure broad access at the State and local levels to the information being disseminated. These regulations describe eligibility requirements (§ 412.2), selection criteria for evaluating applications (§ 412.21), and additional activities to be carried out by the CCCs (§ 412.30).

(13) *National Centers for Research in Vocational Education (part 413).* Under the authority for the National Centers

for Research in Vocational Education (National Center or Centers) awards are provided for a National Center or Centers to carry out activities in the areas of applied research and development and dissemination and training. These regulations describe eligible applicants (§ 413.2), the procedure for the selection of a National Center or Centers (§ 413.20), and selection criteria for evaluating applications (§§ 413.21 and 413.22).

The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers in order to fund the best proposal for both applied research and development activities and dissemination and training activities while giving preference to a consolidated application. A separate competition forestalls the possibility of funding a consolidated application that only adequately addresses both types of activities to be carried out by a National Center. Moreover, a separate competition will permit the Department to select panels based on particular expertise in research and development and dissemination and training.

The Secretary specifically invites ideas on how to effectively combine the two competitions and ensure that the best applications are funded for both the applied research and development activities and the dissemination and training activities.

(14) *Materials Development in Telecommunications Program (part 414).* The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges. These regulations describe eligible applicants (§ 414.2), allowable activities (§ 414.3), program priorities (§ 414.20), and selection criteria for evaluating applications (§ 414.21). Federal funds are to be used to pay 50 percent of the costs of projects (§ 414.13).

(15) *Demonstration Centers for the Training of Dislocated Workers Program (part 415).* The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers. These regulations describe eligibility requirements (§ 415.2), selection criteria for evaluating applications (§ 415.21), and evaluation requirements (§ 415.30).

(16) *Vocational Education Training and Study Grants Program (part 416).* The National Vocational Education Training and Study Grants Program provides grants to certain agencies and institutions for vocational teacher education, graduate training in vocational education, and vocational education student internships (§ 416.1). These regulations establish eligibility requirements (§ 416.2), and selection criteria for evaluating applications (§ 416.21).

(17) *Vocational Education Leadership Development Award Program (part 417).* The Vocational Education Leadership Development Award Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs. These regulations describe how the Secretary makes awards to institutions (§§ 417.20 through 417.22), how individuals apply for awards (§§ 417.40 and 417.41), and conditions to be met by recipients of leadership development awards (§§ 417.50 through 417.55).

(18) *Vocational Educator Training Fellowship Program (part 418).* Under the Vocational Educator Training Fellowship Program the Secretary provides fellowships for individuals to receive training as vocational educators through approved institutions of higher education. These regulations describe who is eligible for a fellowship (§ 418.2), how the Secretary selects fellows (§§ 418.30 through 418.33), and the conditions to be met by fellows (§§ 418.40 through 418.49).

(19) *Internships for Gifted and Talented Vocational Education Students Program (part 419).* The Internships for Gifted and Talented Vocational Education Students Program provides internships to attract gifted and talented vocational education students into further study and professional development in the field of vocational education (§ 419.1). These regulations describe eligibility requirements (§ 419.2) and selection criteria for evaluating applications for internships (§ 419.22).

(20) *Business and Education Standards Program (part 421).* The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades. These regulations describe eligible applicants (§ 421.2), allowable activities (§ 421.3), selection criteria for evaluating applications (§ 421.21), and cost-sharing requirements (§ 421.30).

(21) *Educational Programs for Federal Corrections Institutions (part 422).* The Educational Programs for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions. These regulations establish eligibility requirements (§ 422.2) and selection criteria for evaluating applications (§ 422.21).

(22) *Vocational Education Dropout Prevention Program (part 423).* The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school. These regulations describe allowable activities (§ 423.2) and selection criteria for evaluating applications (§ 423.21).

(23) *Model Centers of Regional Training for Skilled Trades Program (part 424).* The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide training for skilled tradesmen and technical assistance for programs that train skilled tradesmen within a region serving several States. These regulations establish eligibility requirements (§ 424.2), criteria for evaluating applications (§ 424.21), and evaluation requirements (§ 424.30).

(24) *Demonstration Projects for the Integration of Vocational and Academic Learning Program (part 425).* The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning. These regulations establish eligibility requirements (§ 425.2), selection criteria for evaluating applications (§ 425.21), and evaluation requirements (§ 425.30).

(25) *Cooperative Demonstration Program (part 426).* The Cooperative Demonstration Program provides financial assistance for demonstration projects, model consumer and homemaking education projects, community-based organization projects, and agriculture action centers. These regulations establish eligibility requirements (§ 426.2), selection criteria for evaluating applications (§§ 426.21 through 426.24), cost-sharing requirements (§ 426.30), and dissemination and evaluation requirements (§§ 426.31 and 426.32).

(26) *Bilingual Vocational Training Program (part 427).* The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training in order to prepare limited English proficient out-of-school youth and adults for jobs in recognized occupations, including new and emerging occupations. These regulations establish requirements for eligibility (§ 427.2) and the content of applications (§ 427.10). The regulations also establish selection criteria for evaluating applications (§ 427.21) and evaluation requirements (§ 427.30).

(27) *Bilingual Vocational Instructor Training Program (part 428).* The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. These regulations establish eligibility requirements (§ 428.2), and selection criteria for evaluating applications (§ 428.21).

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the State Vocational and Applied Technology Education Program, the State-Administered Tech-Prep Education Program, and the Supplementary State Grants Program, grants are available only to States, and States and State agencies are not defined as "small entities" under the Regulatory Flexibility Act. The small entities that would be affected under these regulations are small LEAs, area vocational schools, intermediate educational agencies, postsecondary educational institutions, State correctional institutions, and community-based organizations receiving Federal funds. However, the regulations would not have a significant economic impact on the small entities affected because they repeat statutory requirements and do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The selection criteria for applications reviewed under the Secretary's discretionary programs require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

Paperwork Reduction Act of 1980

Sections 400.9, 400.10, 401.21, 401.23, 401.31, 402.21, 403.12, 403.13, 403.19, 403.30, 403.31, 403.32, 403.33, 403.34, 403.81, 403.100, 403.115, 403.141, 403.184, 403.190, 403.192, 403.193, 403.201 through 403.205, 405.10, 405.21, 405.30, 406.10, 406.32, 406.33, 407.10, 407.32, 408.10, 408.22, 408.34, 409.21, 409.30, 410.10, 410.21, 411.21, 412.21, 413.21, 413.22, 414.22, 415.21, 415.30, 416.21, 416.31, 417.21, 417.31, 417.41, 418.20, 419.20, 419.22, 421.21, 422.2, 422.21, 422.30, 423.2, 423.21, 423.30, 424.21, 424.30, 425.21, 425.30, 426.2, 426.21 through 426.24, 426.32, 427.10, 427.21, 427.30, 428.10, and 428.21; and appendix D contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections, including any data collection request based on any reporting requirements in Appendix D, to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

State and local governments, individuals, businesses or other for-profit, and non-profit institutions are eligible to apply for grants under these regulations. The Department needs and uses this collection of information to make grants and monitor the compliance of grantees with statutory and regulatory requirements.

In developing the selection criteria for the vocational education discretionary programs the Secretary took into consideration the particular nature of each program. This Department experience has shown that in order to select quality vocational education applications the technical review criteria must be specific to the particular program under which grants will be made. Each individual criterion is weighted in relationship to the importance of that criterion for helping to select quality applications for a specific discretionary program. In designing the selection criteria, the Secretary also considered the major differences between the purposes of different types of discretionary programs; such as, demonstration programs, education and training programs, research and development programs, capacity building programs, and national centers.

Consequently, the selection criteria reflect the different purposes of the various program types. The rationale for selecting particular selection criteria that are included in the proposed regulations for more than one discretionary program are as follows:

(a) "Program Factors" are used to ensure that projects are related to the specific legislative purposes and requirements for each program.

(b) "Need" is used in training programs and in some of the research programs to determine the local, State, regional, or national need for a project proposed by an applicant.

(c) "Program Design" is used in education and training programs to analyze the conceptual and technical design of the proposed activities and relates to assessing the quality and accessibility of the training to be provided.

(d) "Educational Significance" is used in many of the demonstration programs and programs that offer training in order to determine whether the proposed activities are likely to contribute significantly to the improvement of education.

(e) "Plan of Operation" is used to assess the quality of both management and implementation activities that an applicant proposes.

(f) "Key Personnel" is used to determine the quality and appropriateness of key personnel and whether staff have experience that will aid in accomplishing project objectives. However, there are a few programs where determining the quality of key personnel is not a critical factor, for instance, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(g) "Budget and Cost-effectiveness" is used to determine how well proposed costs relate to the accomplishment of project activities. However, there are a few programs where determining the budget and cost-effectiveness is not a critical factor because awards are made to individuals through fellowships or stipends; for example, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(h) "Evaluation Plan" is used to ensure program and project accountability in demonstration programs and education and training programs.

(i) "Third Party Evaluation" is used to determine the rigor and strategy for evaluation for certain programs ensuring project accountability.

(j) "Demonstration and Dissemination" is used to determine, mostly for demonstration and model programs, the effectiveness of the planned demonstration and dissemination activities.

(k) "Adequacy of Resources" is used in research and demonstration programs to determine if the applicant has planned for and requested enough funds.

(l) "Institutional Commitment" is used in long-term projects to determine the past and current commitment of the applicant.

(m) "Coordination" is useful for determining the planned coordination activities with various types of organizations and entities, where the Act calls for coordination activities.

The annual public reporting burden for the collection of information is estimated to average 1000 hours per response for 53 respondents affected by the State plan requirements, 324 hours per response for 4212 respondents affected by the vocational education act reporting requirements, 90 hours per response for 552 respondents who submit an application for a discretionary program, 28 hours per response for 90 respondents that submit a performance report for a discretionary program, and 12 hours per response for 57 respondents who submit abstracts describing State-administered vocational education improvement projects.

The annual reporting and recordkeeping burden for the collection includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office building, Washington, DC 20503; Attention: Daniel Chenok.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in chapter IV of title 34 are proposed to be redesignated. The following table lists old and new part numbers for all programs in chapter IV of title 34.

New 34 CFR part Nos.	Title	Old 34 CFR part Nos.
400	Vocational and Applied Technology Education—General Provisions.	400
401	Indian Vocational Education Education.	410
402	Native Hawaiian Vocational Education Program.	410
403	State Vocational and Applied Technology Education Program.	401
404	[RESERVED]	
405	National Tech-Prep Education Program.	NEW
406	State-Administered Tech-Prep Education Program.	NEW
407	Supplementary State Grants Program.	NEW
408	Community Education Employment Centers Program.	NEW
409	Vocational Education Lighthouse Schools Program.	NEW
410	Tribally Controlled Postsecondary Vocational Institutions Program.	NEW
411	Vocational Education Research Program.	416
412	National Network for Curriculum Coordination in Vocational and Technical Education.	NEW
413	National Center or Centers for Research in Vocational Education.	417
414	Materials Development in Telecommunications Program.	NEW
415	Demonstration Centers for the Training of Dislocated Workers Program.	411
416	Vocational Education Training and Study Grants Program.	NEW
417	Vocational Education Leadership Development Awards Program.	NEW
418	Vocational Educator Training Fellowships Program.	NEW
419	Internships for Gifted and Talented Vocational Education Students Program.	NEW
420	[RESERVED]	
421	Business and Education Standards Program.	NEW
422	Educational Programs for Federal Correctional Institutions.	NEW
423	Vocational Education Dropout Prevention Program.	NEW
424	Model Centers of Regional Training for Skilled Trades.	NEW
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	NEW
426	Cooperative Demonstration Programs.	412
427	Bilingual Vocational Training Program.	407
428	Bilingual Vocational Instructor Training Program.	408
429	Bilingual Materials, Methods, and Techniques Program.	409
445	Technology Education Demonstration Program.	445
430–459.	[RESERVED]	
460	Adult Education Programs—General Provisions.	425
461	Adult Education State-administered Basic Grant Programs.	426
462	State-administered Workplace Literacy Program.	433
463	State-administered English Literacy Program.	434
464	State Literacy Resource Centers Program.	None
465–470.	[RESERVED]	
471	National Adult Education Discretionary Program.	431
472	National Workplace Literacy Program.	432
473	National Workforce Literacy Strategies Program.	None
474	National English Literacy Demonstration Program for Individuals of Limited English Proficiency.	435
475	Adult Migrant Farmworker and Immigrant Education Program.	436
476	National Adult Literacy Volunteer Training Program.	437
477	State Program Analysis Assistance and Policy Studies Program.	438
478–488.	[RESERVED]	
489	Functional Literacy for State and Local Prisoners Program.	None
490	Life Skills for State and Local Prisoners Program.	None
491	Adult Education for the Homeless Program.	441
492–499.	[RESERVED]	

Intergovernmental Review

Programs covered by 34 CFR parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4050, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 403 and 407

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and Recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), and 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Supplementary State Grants Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Dated: July 1, 1991.

Lamar Alexander,

Secretary of Education.

Chapter IV of title 34 of the Code of Federal Regulations is revised as follows:

1. The following parts are redesignated as follow:

Old parts	New parts
409	429
425	460
426	461
432	462
433	463
434	464
435	465
436	466
437	467
438	468
441	499

(Note: All internal references will be amended in the final rule according to the preceding redesignation table.

2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.
400.1 What is the purpose of the Vocational and Applied Technology Education Programs?
400.2 What programs are governed by these regulations?
400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?
400.4 What definitions apply to the Vocational and Applied Technology Education Programs?
400.5 Under what conditions may funds under the Act be used for the joint funding of programs?
400.6 What are the requirements for establishing a State Committee of Practitioners?
400.7 What are the provisions governing the issuance of State standards and measures of performance and State rules or regulations?
400.8 What are the provisions governing student assistance?
400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?
400.10 What are the reporting requirements?

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§ 400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.* (1) State Vocational and Applied Technology Education Program (34 CFR part 403).

(2) State-administered Tech-Prep Education Program (34 CFR part 406).

(3) Supplementary State Grants Program (34 CFR part 407).

(b) *National discretionary programs.* (1) Indian Vocational Education Program (34 CFR part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR part 402).

(3) National Tech-Prep Education Program (34 CFR part 405).

(4) Community Education Employment Centers Program (34 CFR part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410).

(7) Vocational Education Research Program (34 CFR part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR part 413).

(10) Materials Development in Telecommunications Program (34 CFR part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR part 419).

(16) Business and Education Standards Program (34 CFR part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425).

(21) Cooperative Demonstration Programs (34 CFR part 426).

(22) Bilingual Vocational Training Program (34 CFR part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that the performance reporting requirements in 34 CFR 75.720 do not apply to parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 and the financial reporting requirements in 34 CFR 75.720 do not apply to parts 412 and 413).

(3) 34 CFR part 76 (State-Administered Programs) (applicable to parts 403, 406, and 407).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying) (not applicable to parts 401 and 410).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts under parts 401, 402, 411, 412, 426, 427, 428, and 429).

(c) The regulations in this part 400.

(d) The regulations in 34 CFR parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Equipment
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990)), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining that meet these requirements.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade "A" equals 4.0), or who fails to attain minimum academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free- or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(2) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3)

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled "Education of the Handicapped Act."

Individual with disabilities means—

(1) Any individual who—

(i) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(ii) Has a record of an impairment described in paragraph (i) of this definition; or

(iii) Is regarded as having an impairment described in paragraph (i) of this definition.

(2) Any individual who has been evaluated under part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; or

(3) Any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

This term also includes—

(A) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition; and

(B) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31 (e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services include, but are not limited to—

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Standard means the level or rate of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§ 400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a) (1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§ 400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organization;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under part B of the IDEA;

(5) The State administrator of programs assisted under chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;

(ii) School administrators;

(iii) Teachers;

(iv) Parents;

(v) Members of local boards of education;

(vi) Representatives of institutions of higher education; and

(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325(a) and (d)(1); 2468a)

§ 400.7 What are the provisions governing the issuance of State standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under § 400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of a projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or regulation before it is issued in final form.

Cross-Reference: See § 400.8(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§ 400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are—

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§ 400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

§ 400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports quarterly;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report;

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports; and

(4) Part 419 shall submit semi-annual performance reports.

(Authority: 20 U.S.C. 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.
401.1 What is the Indian Vocational Education Program?
401.2 Who is eligible for an award?
401.3 What activities may the Secretary fund?
401.4 What regulations apply?
401.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

401.10 How are applications submitted?

Subpart C—How Does the Secretary Make an Award?

401.20 How does the Secretary evaluate an application?
401.21 What selection criteria does the Secretary use?
401.22 What additional factors may the Secretary consider?
401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

Subpart D—What Conditions Must Be Met After an Award?

401.30 How does the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?
401.31 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§ 401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§ 401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127–75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§ 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants. contracts. or cooperative agreements to plan. conduct. and administer projects or portions of projects that are authorized by and consistent with the purpose of the Act. In the case of a grant to a Bureau-funded school. the Secretary provides a minimum grant of $35.000.

(b) Projects funded under this program are in addition to other programs. services. and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education: and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program: and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law. or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

§ 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

§ 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the "Johnson-O'Malley Act" that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce.

Bureau means the Bureau of Indian Affairs. Department of Interior.

Bureau-funded school means—

(1) A Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102. 104(1). or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f. 450h(1). and 458d): or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b): 25 U.S.C. 2019(3). (4). and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe. band. Nation. or other organized group or community. including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled. sanctioned. or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. Provided. that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe. the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(Authority: 25 U.S.C. 450b(1))

(Authority: 20 U.S.C. 2313(a)(1)(A). (b))

Subpart B—How Does One Apply for an Award

§ 401.10 How are applications submitted?

(a) An application from a tribal organization must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1): 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§ 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points. including a reserved 15 points to be distributed in accordance with paragraph (d) of this section. based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section. the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**. the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21. the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve. coordinate with. or encourage tribal economic development plans: and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education: or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§ 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment. completion. and placement that are realistic in terms of stated needs. resources. and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or

standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population:

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30–403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements:

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points). (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Authority: 20 U.S.C. 2313(b))

§ 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§ 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must be Met After an Award?

§ 401.30 How does the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313(b)(1)(A)(ii) (I) and (II))

§ 401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants's job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Authority: 20 U.S.C. 2313(b))

4. A new part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.
402.1 What is the Native Hawaiian Vocational Education Program?
402.2 Who is eligible for an award?
402.3 What activities may the Secretary fund?
402.4 What regulations apply?
402.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

402.20 How does the Secretary evaluate an application?
402.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

402.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(c), unless otherwise noted.

Subpart A—General

§ 402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§ 402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 402.

(Authority: 20 U.S.C. 2313(c))

§ 402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 402.21.

(Authority: 20 U.S.C. 2313(c))

§ 402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Third-party evaluation.* (10 points) (1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 402.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Authority: 20 U.S.C. 2313(c))

5. A new part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Sec.

403.1 What is the State Vocational and Applied Technology Education Program?
403.2 Who is eligible for an award?
403.3 What regulations apply?
403.4 What definitions apply?

Subpart B—What Are the State's Organizational and Planning Responsibilities?

403.10 What is the State board?
403.11 What are the principal responsibilities of the State board?
403.12 What are the additional responsibilities of the State board?
403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?
403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?
403.15 What are the personnel requirements regarding coordination with services under chapter 1 of title I of the Elementary and Secondary Education Act?

403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

403.17 What are the State's responsibilities regarding a State council on vocational education?

403.18 What are the membership requirements of a State council on vocational education?

403.19 What are the responsibilities of a State council on vocational education?

Subpart C—How Does a State Apply for a Grant?

403.30 What documents must a State submit to receive a grant?

403.31 How is the State plan developed?

403.32 What must the State plan contain?

403.33 What procedures does a State use to submit its State plan?

403.34 When are amendments to the State plan required?

Subpart D—How Does the Secretary Make a Grant to a State?

403.50 How does the Secretary make allotments?

403.51 How does the Secretary make reallotments?

403.52 How does the Secretary approve State plans and amendments?

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

403.60 What are the basic programs?

403.61 What projects, services, and activities are permissible under the basic programs?

403.62 What administrative provisions apply?

403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

State Programs and State Leadership Activities

403.70 How must funds be used under the State Programs and State Leadership Activities?

403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

403.80 Who is eligible for a subgrant or contract?

403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

Sex Equity Program

403.90 Who is eligible for a subgrant or contract?

403.91 How must funds be used under the Sex Equity Program?

403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

Programs for Criminal Offenders

403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

403.101 How must funds be used under the Programs for Criminal Offenders?

403.102 What other requirements apply to the Program for Criminal Offenders?

Secondary, Postsecondary, and Adult Vocational Education Programs

403.110 Who is eligible for a subgrant or contract?

403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

403.130 What are the Special Programs?

403.131 Who is eligible for an award under the Special Programs?

Vocational Education Support Programs by Community-Based Organizations

403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

Consumer and Homemaking Education Programs

403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

403.151 How must funds be used under the Consumer and Homemaking Education Programs?

Comprehensive Career Guidance and Counseling Programs

403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

Business-Labor-Education Partnership for Training Program

403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

403.171 Who is eligible to apply to a State board for an award?

403.172 What special considerations must the State board give in approving projects, services, and activities?

403.173 What expenses are allowable?

403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

Subpart G—What Financial Conditions Must Be Met by a State?

403.180 How must a State reserve funds for the basic programs?

403.181 What are the cost-sharing requirements applicable to the basic programs?

403.182 What is the maintenance of fiscal effort requirement?

403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

403.184 How does a State request a waiver of the maintenance of effort requirement?

403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

403.186 What are the administrative cost requirements applicable to a State?

403.187 How may a State provide technical assistance?

Subpart H—What Conditions Must Be Met by Local Recipients?

403.190 What are the requirements for receiving a subgrant or contract?

403.191 What are the requirements for program evaluation?

403.192 What are the requirements for program improvement?

403.193 What are the information requirements regarding special populations?

403.194 What are the comparability requirements?

403.195 What are the administrative cost requirements applicable to local recipients?

403.196 What are the requirements regarding supplanting?

403.197 What are the requirements for the use of equipment?

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?
403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?
403.202 What must each State's system of core standards and measures of performance include?
403.203 What are the State's responsibilities for a State assessment?
403.204 What are the State's responsibilities for program evaluation and improvement?
403.205 What are the State's responsibilities for members of special populations?
403.206 What are the States's responsibilities regarding a State occupational information coordinating committee?
403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?
403.208 What are the requirements regarding supplanting?

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Authority: 20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990), unless otherwise noted.

Subpart A—General

§ 403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by title II of the Act and listed in § 403.60, and the special programs authorized by title III of the Act that are covered by the State plan and listed in § 403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.2 Who is eligible for an award?

Except as otherwise provided in § 403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§ 403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§ 403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§ 403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§ 403.32 (a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§ 403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§ 403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in § 403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§ 403.13 through 403.18 and 403.200 through 403.208.

(Authority: 20 U.S.C. 2321 (a)(1), (f), (g))

§ 403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in § 403.81, and the sex equity program described in § 403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4) (i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§ 403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§ 403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§ 403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§ 403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§ 403.81 and 403.91 of data appropriate to the individuals served in programs under §§ 403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with § 403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§ 403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall designate or assign the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of plans of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Plans of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to programs; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§ 403.15 What are the personnel requirements regarding coordination with services under chapter 1 of title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term *State* includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c) and (d))

§ 403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational education programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§ 403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§ 403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§ 403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the disabled; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§ 403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Program on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2323)

§ 403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under § 403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of a hearing on the State plan at least 30 days prior to the hearing.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§ 403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that—

(1) The State board will comply with the applicable requirements of titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the requirements of titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for its entire vocational education program for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of programs conducted by eligible recipients to ensure that the projects, services, and activities conducted with assistance under the Act are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools the State will provide for the participation of those individuals in the vocational education programs assisted under §§ 403.112 and 403.113;

(6) The State will comply with the provisions of § 403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant §§ 403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§ 403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under § 403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and that those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§ 403.194 and 403.200.

(15) (i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, and vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: House Report No. 101–660, 101st Cong., 1st Sess. p. 111 (1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including such funds paid by the State to eligible recipients under the Act;

(17) Funds made available under title II of the Act will be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§ 403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under sections 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protection will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described § 403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26) (i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by

businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating business or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by § 403.203, including the needs identified by the assessments.

(2) The plans for the use of the funds and how those planned uses reflect the needs described in paragraph (b)(1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each institutional level, of funds to corrections educational agencies as prescribed by § 403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§ 403.112 and 403.113, and of funds to eligible institutions as prescribed by § 403.116.

(5) The criteria the State board will use—

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under § 403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: House Report No. 101–660, 101st Cong., 1st Sess. p. 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for the prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§ 403.191 and 403.192.

(10) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

(12) How the State will comply with the provisions of §§ 403.32(a)(18)–(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program.

(14) The State corrections educational agency or agencies designated to administer vocational education programs assisted under the Act, and the plan for the use of funds provided under § 403.180(b)(5).

(15) Any delegation of functions under § 403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirements in § 403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of § 403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for the purposes of § 403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of § 403.119(a).

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by § 403.31(e).

(d) To be eligible to participate in the Supplementary State Grants Program under sections 351–356 of the Act, a State board shall comply with the requirements in 34 CFR 407.10.

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a); 2325(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d); .: 2341b(a); 2392(b); 2463; and 2468e(a)(1))

§ 403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-Reference: See § 403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan will be considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b))

§ 403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Authority: 20 U.S.C. 2323(c))

Subpart D—How Does the Secretary Make a Grant to a State?

§ 403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in § 403.60, and under section 3(d) of the Act for the special programs listed in § 403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year, the Secretary makes an award to the State council.

(c) From funds made available under sections 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor entity shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in § 403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§ 403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(b))

§ 403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education;

(iii) The State agency responsible for secondary education; and

(iv) The State Committee of Practitioners established under 34 CFR 400.6.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§ 403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§ 403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§ 403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§ 403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e(b) and (d))

§ 403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) For the purpose of requirements dealing with local applications (§§ 403.190 and 403.32(b)(5)) and the distribution of funds to eligible recipients (§ 403.32(a)(6)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3), 2335b; 2342(c)(2)(N); and 2343).

State Programs and State Leadership Activities

§ 403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) to conduct projects and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§ 403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in § 403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) for projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR part 406;

(c) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations. The support of vocational student organizations may not include—

(1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(2) Purchase of supplies, jackets, and other effects for students' personal ownership;

(3) Cost of non-instructional activities such as athletic, social, or recreational events;

(4) Printing and disseminating non-instructional newsletters;

(5) Purchase of awards for recognition of students, advisors, and other individuals; or

(6) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); House Report No. 101-660, 101st Cong., 1st Sess. p. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§ 403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§ 403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with § 403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§ 403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in § 403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of § 403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§ 403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§ 403.91 How must funds be used under the Sex Equity Program?

Except as provided in § 403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with § 403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§ 403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under § 403.13(a) may waive the requirement in § 403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the waiver is essential to meet the objectives of § 403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§ 403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Authority: 20 U.S.C. 2336(a))

§ 403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under § 403.180(b)(5) for criminal offenders, each State corrections educational agency designated under § 403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§ 403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under § 403.100(a) shall meet the requirements in §§ 403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§ 403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in § 403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in § 403.117(b), including a nonprofit institution that satisfies the conditions set forth in § 403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of § 403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341 (a) and (d); 2341a (a) and (d)(1); and 2342(c))

§ 403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services necessary for them to succeed in vocational education; and

Cross-Reference: See appendix A to part 403 and §§ 403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 meets the requirements in this section and §§ 403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: Method to give priority to a limited number of sites. Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

(c) Funds made available from an award under §§ 403.112, 403.113, or 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§ 403.190(b) and 403.193.

Cross-Reference: See appendix A to part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§ 403.112, 403.113, or 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§ 403.112, 403.113, or 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, that seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§ 403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and § 401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5.000.000 of its basic programs funds under

Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80.000.000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district "A" was allocated $400.000.

(2) The allocation for school district "A" is calculated by multiplying $3.500.000 (70 percent of $5.000.000) by .005 of the State total ($400.000÷$80.000.000). The allocation for school district "A" would be $17.500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100.000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district "A" served 400 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying $1.000.000 (20 percent of $5.000.000) by .004 of the State total (400÷100.000). The allocation for school district "A" would be $4.000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1.000.000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district "A" enrolled 3.500 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying 500.000 (10 percent of $5.000.000) by .0035 of the State total (3.500÷1.000.000). The allocation for school district "A" would be $1.750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of § 403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area; and

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program.

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341 (a), (b), and (c))

§ 403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under § 403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under § 403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under § 403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of § 403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§ 403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of § 403.111(c), a State shall encourage the LEA to—

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the

requirements of § 403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under § 403.112 meets the minimum grant requirement in § 403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by § 403.112(d).

(Authority: 20 U.S.C. 2341(d) (1), (2), and (5))

§ 403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of § 403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(ii) The program for aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of chapter 1.

(2) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§ 403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area agency with respect to the allocation procedures described in §§ 403.112 and 403.113, including the decision of an LEA to leave a consortium.

(Authority: 20 U.S.C. 2341(d)(4))

§ 403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.* (1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§ 403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in vocational education, as defined in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in vocational education programs within the State in that preceding year.

(c) *Minimum grant amount.* (1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a (a) and (c))

§ 403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§ 403.116, 403.118, and 403.120 the following definitions apply:

(a) *Eligible institution* means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under § 403.116.

(b)(1) *Institution of higher education* means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the

provisions of paragraphs (b)(1) (i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, will appoint an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) *Pell Grant recipient* means a recipient of financial aid under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–l *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§ 403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive § 403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in § 403.116(b)(2) does not result in a distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution;

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions; and

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis.

(Authority: 20 U.S.C. 2341a(b))

§ 403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under § 403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§ 403.112, 403.113, or 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§ 403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not expend all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education, intermediate school district, or eligible institution shall return any unexpended amounts to the State to be reallocated under §§ 403.112(b), 403.113, or 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§ 403.112(b), 403.113, 403.116(b), or 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be expended in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§ 403.112(b), 403.113, 403.116(b), or 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§ 403.130 What are the Special Programs?

The following special programs are authorized by title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(e) Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

§ 403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(c) The fifty States, the District of Columbia, and Puerto Rico are eligible for the Supplementary State Grants Programs in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

Vocational Education Support Programs by Community-Based Organizations

§ 403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Disabled individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362 (a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and full-time State administrator(s) qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, and dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382 (a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high-technology equipment for programs authorized by this part;

(4) Other activities authorized by title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393(a), (d)(1))

§ 403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§ 403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393(b) and (d)(2))

§ 403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs, business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§ 403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

(a) The business and industrial share of the costs required in § 403.32(a)(29) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by § 403.32(a)(29), the State board may use funds available under parts A and C of title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§ 403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under § 403.81, and the Sex Equity Program under § 403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal

Year (FY) 1991 grant from the FY 1990 appropriation: and

(ii) The Program for Criminal Offenders under § 403.101 an amount that is not less than—

(A) The amount the State reserved for projects. services. or activities under section 202(6) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation: and

(B) The amount of Federal funds under the CDPVEA. other than the one percent reserve under section 202(6) of the Act. that the State and its eligible recipients obligated for projects. services. and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the Carl D. Perkins Vocational Education Act. the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section. from its allotment for the basic programs authorized by title II of the Act. a State shall reserve—

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in § 403.111:

(2) Ten and one-half percent for the Program for Single Parents. Displaced Homemakers. and Single Pregnant Women described in § 403.81 and the Sex Equity Program described in § 403.91. as follows:

(i) Not less than seven percent for the Program for Single Parents. Displaced Homemakers. and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program:

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§ 403.70 and 403.71:

(4) Not more than five percent or $250.000. whichever is greater. for administration of the State plan. of which—

(i) Not less than $60.000 must be available for carrying out the provisions in § 403.13. regarding the personnel requirements for eliminating sex discrimination and sex stereotyping: and

(ii) Remaining amounts may be used for the costs of—

(A) Developing the State plan:

(B) Reviewing local applications:

(C) Monitoring and evaluating program effectiveness:

(D) Providing technical assistance:

(E) Ensuring compliance with all applicable Federal laws. including required services and activities for individuals who are members of special populations: and

(F) Supporting the activities of the technical committees it establishes under § 403.12(b)(1): and

(5) One percent for Programs for Criminal Offenders described in § 403.101.

(c) The procedure for meeting the "hold-harmless" requirements in § 403.180(a) and the $250.000 minimum for State administration provision in § 403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250.000 minimum allowed by paragraph (b)(4) of this section. or if any of the amounts reserved for the Program for Single Parents. Displaced Homemakers. and Single Pregnant Women in § 403.81. the Sex Equity Program in § 403.91. or the Program for Criminal Offenders in § 403.101. respectively. is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant). a State shall subtract any amount necessary to satisfy the $250.000 minimum for State administration or any of the "hold-harmless" amounts from the total basic programs award received by the State.

(2) The State shall reserve $250.000 for administration and shall reserve for any program not meeting the "hold-harmless" requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the "hold-harmless" requirements in paragraph (a)(1) of this section.

Example: 1 (a) A State receives a basic programs award of $4.000.000. Five percent of the basic programs award equals $200.000. which is $50.000 less than the $250.000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under title II. parts A. B. and C of the Act. the State first subtracts $250.000 for State administration from the $4.000.000 basic programs award ($4.000.000 − $250.000 = $3.750.000).

(b) Second. the State determines the amount that would have been reserved for each of the programs under title II. parts A. B. and C of the Act in the absence of a shortfall in the set-aside amount for administration. as follows:

3.0% × $4.000.000 =	$120.000	For Sex Equity Programs.
7.5% × $4.000.000 =	300.000	For Programs for Single Parents. Displaced Homemakers. and Single Pregnant Women.
8.5% × $4.000.000 =	340.000	For State Programs and State Leadership Activities.
1.0% × $4.000.000 =	40.000	For Programs for Criminal Offenders.
75% × $4.000.000 =	3.000.000	For Part C of Title II.
	3.800.000	

(c) Third. the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3.800.000) and multiplies the remaining basic programs award ($3.750.000) by these percentages to determine the amount to reserve for each program under parts A. B. and C of title II of the Act. as follows:

(120.000/ $3.800.000) × $3.750.000 =	$118.421	For Sex Equity Programs.
(300.000/ $3.800.000) × $3.750.000 =	296.053	For Programs for Single Parents. Displaced Homemakers. and Single Pregnant Women.
($340.000/ $3.800.000) × $3.750.000 =	335.526	For State Programs and State Leadership Activities.
($40.000/ $3.800.000) × $3.750.000 =	39.474	For Programs for Criminal Offenders.
($3.000.000/ $3.800.000) × $3.750.000 =	2.960.526	For Part C of Title II.
	3.750.000	

This example assumes that amounts reserved meet the "hold-harmless" requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Program for Single Parents. Displaced Homemakers. and Single Pregnant Women is $1.400.000 and the amount reserved for that program from its FY 1991 grant was $1.581.000. Therefore. the FY 1992 reserve for that program is $181.000 less than the amount reserved in FY 1991. The State received a basic programs award of

$20,000,000 in FY 1992. The other programs under title II, part B meet the "hold-harmless" requirement of § 403.180(a)(1), and the reserve for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under title II, parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000 − $1,581,000 = $18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under parts A, B, and C of title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0% × $20,000,000 =	$1,000,000	For administration.
3.5% × $20,000,000 =	700,000	For Sex Equity Programs.
8.5% × $20,000,000 =	1,700,000	For State Programs and State Leadership Activities.
1.0% × $20,000,000 =	200,000	For Programs for Criminal Offenders.
75.0% × $20,000,000 =	15,000,000	For Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve each program under parts A, B, and C of title II of the Act, as follows:

($1,000,000/ $18,600,000) × $18,419,000 =	$990,269	For administration.
($700,000/ $18,600,000) × $18,419,000 =	693,188	For Sex Equity Programs.
($1,700,000/ $18,600,000) × $18,419,000 =	1,683,457	For State Programs and State Leadership Activities.
($200,000/ $18,600,000) × $18,419,000 =	198,054	For Programs for Criminal Offenders.
($15,000,000/ $18,600,000) × $18,419,000 =	14,854,032	For Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the "hold-harmless" requirement of section 102(c) (1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the "hold-harmless" provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced hold-harmless amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced "hold-harmless" amounts.

(Authority: 20 U.S.C. 2312)

§ 403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under § 403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in § 403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in § 403.13.

(Authority: 20 U.S.C. 2312(b) and 2468d; House Report No. 101–660, 101st Cong., 2nd Sess. pp. 103 and 104 (1990))

§ 403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§ 403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in § 403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) For purposes of this section, "exceptional or uncontrollable circumstances" include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§ 403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in § 403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Authority: 20 U.S.C. 2463(b))

§ 403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988–June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987–June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures from the first preceding program year (July 1, 1989–June 30, 1990) must equal or exceed its expenditures from the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§ 403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs.* A State may use only funds reserved under § 403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs.* (1) A State may use the funds reserved under § 403.180(b)(4) to administer any of the special programs listed in § 403.130.

(2) In addition to the funds reserved under § 403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under § 403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§ 403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d)(A)–(F) and 2312(a))

§ 403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under § 403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program or funds allotted under 34 CFR part 407 for the Supplementary State Grants Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d)(A)–(F), 2312(a), and 2323(b)(5))

Subpart H—What Conditions Must Be Met by Local Recipients?

§ 403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in § 403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§ 403.112, 403.113, or 403.116 and from other sources to improve the program with regard to each requirement and activity described in § 403.111 (c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations;

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations;

(2) Provide assurances that—

(i) The programs funded under §§ 403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids;

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under § 403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in § 403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under title II of the Act must provide assurances to the

State board that, with respect to any project that is funded under title II or title III of the Act, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in programs receiving assistance under titles II and III of the Act, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services, as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services;

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities; and

(c) Each eligible recipient desiring financial assistance under title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See § 403.193(e)

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with § 403.32(a)(18)–(28).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in § 403.14(a)(2); and

(2) Include in its application, as appropriate,—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its disabled students, economically disadvantaged students, and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

(Authority: 20 U.S.C. 2321(c)(1), (d), (e); 2328; and 2343)

§ 403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992–1993 school year, each recipient of financial assistance under §§ 403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the recipient's entire vocational education program, regardless of which particular projects are assisted with those Federal funds.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§ 403.201, 403.202, and 403.203, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b) (1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations in the recipient's entire vocational education program.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate the progress of the recipient's entire vocational education program, in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in § 403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§ 403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify programs that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipients entire program; and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204

(Authority: 20 U.S.C. 2327(b))

§ 403.193 What are the information requirements regarding special populations?

(a)(1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available;

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 403.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks

admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay the cost of services and activities required by this section and §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§ 403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that taken as a whole, are substantially comparable in each secondary school or site.

Examples: Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in paragraph (a) of this section include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with Federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

(b) The comparability requirements in paragraph (a) of this section do not apply to a local educational agency with only one secondary school or site.

(c)(1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for disabled children.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of chapter 1 (20 U.S.C. 2728(d)(2)(B)).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.195 What are the administrative cost requirements applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in § 403.60 or a special program listed in § 403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in § 403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§ 403.196 What are the requirements regarding supplanting?

(a) Funds made available under title II of the Act shall be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and § 403.32(a)(17), funds made available under title II of the Act may be used to pay the costs of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 504 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§ 403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased. may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§ 403.112. 403.113. or 403.116. when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes. may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program: and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased: and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

§ 403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board shall monitor each local educational agency's compliance with the comparability requirements in § 403.194.

(b) If a local educational agency is found not to be in compliance with the comparability requirements. the State board shall withhold, or require repayment of. the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to § 403.194(c).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a)(1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary. postsecondary. and adult vocational education programs.

(2) This system must—

(i) Be developed by September 25. 1992: and

(ii) Apply to all programs assisted under the Act.

(3) For purposes of this section. "programs assisted under the Act" refers to a State board's entire vocational education program.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section. the State board shall appoint a State Committee of Practitioners (Committee). as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review. comment on. and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance. the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective: and

(ii) Have not been effective.

(Authority: 20 U.S.C. 2325 (a) and (d))

§ 403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational programs must include—

(1) Measures of learning and competency gains. including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared. including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education. military service. or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations: and

(ii) Developed for each student. and. if appropriate. consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section. the State board shall take into consideration and shall provide. to the extent appropriate. for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: see 34 CFR 400.6.

(Authority: 20 U.S.C. 2325 (b). (c))

§ 403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria. the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and. if appropriate. other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991–1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others:

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extent to those such programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f)(1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Authority: 20 U.S.C. 2323 (a)(3), (b)(3)(B), and 2328)

§ 403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in § 403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§ 403.201, 403.202, and 403.203, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§ 403.201, 403.202, and 403.203 for more than one year.

(Authority: 20 U.S.C. 2327 (c), (d))

§ 403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

(Authority: 20 U.S.C. 2328(d))

§ 403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§ 403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§ 403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in § 403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in § 403.196.

(Authority: 20 U.S.C. 2468e(a)(1)).

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(a). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under § 403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under CFR 403.111(c)(3).

Example 1: An area vocational education school conducts an informal meeting to provide the information required in § 403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under § 403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

PART 404—[RESERVED]

6. Part 404 is reserved.

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

405.1 What is the National Tech-Prep Education Program?
405.2 Who is eligible for an award?
405.3 What activities may the Secretary fund?
405.4 What regulations apply?
405.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

405.10 What must the application contain?

Subpart C—How Does the Secretary Make an Award?

405.20 How does the Secretary evaluate an application?
405.21 What selection criteria does the Secretary use?
405.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

405.30 What are the evaluation requirements?
405.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority 20 U.S.C. 2394(b))

§ 405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30(a)(1) through (3) and (b).

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127–75.129—Group Applications)

(Authority: 20 U.S.C. 2394a(a))

§ 405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b) (1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§ 405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this Part 405.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§ 405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under § 405.3;

Cross-Reference: See 34 CFR 75.117

(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c (a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§ 405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 405.21.

(b) The Secretary may award up to 100 points, including a reserve 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in § 405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all participants in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 405.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394–2394e)

8. A new part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

406.1 What is the State-Administered Tech-Prep Education Program?
406.2 Who is eligible for an award?
406.3 What activities may the Secretary fund?
406.4 What regulations apply?
406.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

406.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

406.20 How does the Secretary make allotments?
406.21 How does the Secretary make reallotments?

Subpart D—What Conditions Must be Met After a State Receives an Award?

406.30 Who is eligible to apply to a State for an award?
406.31 How does a State carry out the State-administered Tech-Prep Education Program?
406.32 What are the local application requirements?
406.33 What are the reporting requirements?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program if the Secretary has approved the State plan submitted in accordance with 34 CFR 403.30, and the State plan meets the requirements in § 406.10.

(Authority: 20 U.S.C. 2394a(b))

§ 406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in § 406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of

required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals; and

(7) Provide preparatory services that assist all participants in tech-prep education programs, including the provision of skills in the liberal and practical arts and in basic academics, literacy instruction in the English language, in combination with intense technical preparation, as well as the preparatory services described in the definition of this term in 34 CFR 400.4.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§ 406.4 What regulations apply?

The following regulations apply to the State-administered Tech-Prep Education Program:

(a) The regulations in this part 406.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term "Institution of higher education" for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§ 406.10 What must the State application contain?

To receive a grant under this program, a State board must include in its State application to the Secretary a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula; and

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in § 406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth.

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants.

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Authority: 20 U.S.C. 2394c(b)–(e))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act (20 U.S.C. 2311(a)(2)).

(Authority: 20 U.S.C. 2394a(b)(1))

§ 406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs: and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraphs (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§ 406.31 How does a State carry out the State-administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§ 406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Authority: 20 U.S.C. 2394c(a)–(b))

§ 406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Authority: 20 U.S.C. 2394a–2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Sec.
407.1 What is the Supplementary State Grants Program?
407.2 Who is eligible for an award?
407.3 What activities may the Secretary fund?
407.4 What regulations apply?
407.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

407.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

407.20 How does the Secretary make allotments?
407.21 How does the Secretary make reallotments?
407.22 How does a State carry out this program?

Subpart D—How Does an Applicant Apply to a State for an Award?

407.30 Who is eligible to apply to a State for an award?
407.31 How are funds to be used by local agencies?
407.32 What are the local application requirements?
407.33 How does a State make allotments?

Authority: 20 U.S.C. 2395–2395e, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§ 407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§ 407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in § 407.32.

(Authority: 20 U.S.C. 2395–2395a)

§ 407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this part 407.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2395–2395e)

§ 407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395–2395e)

Subpart B—How does a State Apply for a Grant?

§ 407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary, as a part of the State plan developed in accordance with 34 CFR 403.32. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with § 407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary make a Grant to a State?

§ 407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§ 407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the Federal Register the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§ 407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) A State may use funds reserved under 34 CFR 403.180(b)(4) to pay the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§ 407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act; and

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other program improvement activities, such as curriculum development or teacher training.

(Authority: 20 U.S.C. 2395c)

§ 407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in § 407.31(a) is being met.

(Authority: 20 U.S.C. 2395e)

§ 407.33 How does a State make allotments?

In each fiscal year for which a State board receives a grant under this part, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this part that bears the same relationship to the amount allotted to that LEA or those LEAs under section 1006 of Chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of Chapter 1 in the fiscal year in which distribution is made.

(Authority: 20 U.S.C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Sec.
408.1 What is the Community Education Employment Centers Program?
408.2 Who is eligible for an award?
408.3 What activities may the Secretary fund?
408.4 What regulations apply?
408.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

408.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

408.20 What awards does the Secretary make?
408.21 How does the Secretary evaluate an application?
408.22 What selection criteria does the Secretary use?
408.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

408.30 What are the requirements regarding support services?
408.31 What are the requirements regarding a parent/community coordinator?
408.32 What are the requirements regarding a Council of Advisors?
408.33 What are the requirements regarding other center personnel?
408.34 What are the evaluation requirements?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§ 408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade "A" equals 4.0); or

(iii) Who fail to attain minimal academic competencies;

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantage individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§ 408.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for community education employment centers.

(a) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in § 408.30;

(11) Meet the requirements regarding center personnel in §§ 408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in § 408.32.

(b) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§ 408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this part 408.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part: *Parent* includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§ 408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§ 408.2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§ 408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§ 408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.22.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10 (f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating

those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in § 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§ 408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 408.22, the Secretary may select other than the most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§ 408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§ 408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in § 408.32.

(Authority: 20 U.S.C. 2396d(a))

§ 408.32 What are the requirements regarding a Council of Advisors?

(a) Each grantee shall establish an advisory Council of Advisors (Council) as provided in § 408.31(e).

(b) *Membership.* The Council shall consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.

(2) The State council on vocational education.

(3) The State agency responsible for secondary vocational education.

(4) The student body.

(5) The local teacher organization.

(6) Guidance counselors.

(7) Community-based organizations.

(8) Parents.

(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d (a)(5), (b))

§ 408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§ 408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies;

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396h(a))

11. Part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Subpart A—General

Sec.
409.1 What is the Vocational Education Lighthouse Schools Program?
409.2 Who is eligible for an award?
409.3 What activities may the Secretary fund?
409.4 What regulations apply?
409.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

409.20 How does the Secretary evaluate an application?
409.21 What selection criteria does the Secretary use?
409.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

409.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§ 409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§ 409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two or four-year college;

(b) Provide information and assistance to other vocational eduction lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§ 409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this part 409.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396m)

§ 409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.21.

(Authority: 20 U.S.C. 2396m)

§ 409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and development of the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the

Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal sources that will be used for activities described in § 409.3(a).

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment and capacity to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396m)

§ 409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§ 409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, increases in academic and vocational competencies, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?
410.2 Who is eligible for an award?
410.3 What activities may the Secretary fund?
410.4 What regulations apply?
410.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

410.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

410.20 How does the Secretary apply the selection criteria in § 410.21?
410.21 What selection criteria does the Secretary use for institutional support grants?
410.22 What additional factors does the Secretary consider?
410.23 How does the Secretary select grantees for institutional support grants?
410.24 How does the Secretary award additional grants?

Subpart D—What Conditions Must Be Met After an Award?

410.30 What expenses are allowable under an institutional support grant?
410.31 What other provisions apply to this program?

Authority: 20 U.S.C. 2397–2397h, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§ 410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§ 410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§ 410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this part 410.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part, except for the definition of the term "Act."

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§ 410.10 What must an application contain?

An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(a) Documentation showing that the institution is eligible according to the requirements in § 410.2.

(b) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(c) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies its distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors which could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (c)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (c) (6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve its goals and objectives, including personnel, finances, equipment, and facilities. Also provide a detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in § 410.30.

(11) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(d) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in § 410.30.

(e) The institution's Indian student count.

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§ 410.20 How does the Secretary apply the selection criteria in § 410.21?

(a) The Secretary evaluates an application on the basis of the criteria in § 410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in § 401.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 401.21.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutional goals and objectives.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy.* (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in § 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in § 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant, the amount of each grant to be determined by the quality of the application based on the selection criteria stated in § 410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each applicant using the selection criteria in § 410.22. The Secretary funds two or more applicants, taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§ 410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§ 410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance and minor improvements and repair, physical plant maintenance costs

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§ 410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.
411.1 What is the Vocational Education Research Program?
411.2 Who is eligible for an award?
411.3 What activities may the Secretary fund?
411.4 What regulations apply?
411.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

411.20 How does the Secretary evaluate an application?
411.21 What selection criteria does the Secretary use?
411.22 What additional factors may the Secretary consider?
411.23 How does the Secretary evaluate unsolicited applications?
411.24 How does the Secretary select an unsolicited application for funding?

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for disabled individuals, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§ 411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§ 411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to disabled individuals, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§ 411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this Part 411.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of the section, based on the criteria in § 411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§ 411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the Federal Register; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2402)

§ 411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the Federal Register for that fiscal year, if the project proposes activities described in § 411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§ 411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under § 411.20(b) as follows:

(1) Ten points to the selection criterion in § 411.21(a)—national need.

(2) Five points to the selection criterion in § 411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§ 411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Sec.

412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

412.2 Who is eligible for an award?

412.3 What activities may the Secretary fund?

412.4 What is the National Network of Directors Council?

412.5 What regulations apply?

412.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

412.20 How does the Secretary evaluate an application?

412.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

412.30 What additional activities must be carried out by Curriculum Coordination Centers?

412.31 What existing dissemination system must be used?

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§ 412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§ 412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§ 412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—

(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri,

Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§ 412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in § 412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting is to be hosted in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§ 412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this part 412.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2402(c))

§ 412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

§ 412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.21.

(b) The Secretary may award up to 100 points including 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 412.21.

(Authority: 20 U.S.C. 2402(c))

§ 412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials (VECM) and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in § 412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine the personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§ 412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in § 412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in § 412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in § 412.4.

(Authority: 20 U.S.C. 2402(c))

§ 412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.
413.1 What is the National Center or Centers for Research in Vocational Education?
413.2 Who is eligible to apply for the National Center or Centers?
413.3 What kinds of activities are carried out?
413.4 How does the Secretary designate a National Center or Centers?
413.5 What regulations apply?
413.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

413.20 How does the Secretary evaluate an application?
413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?
413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

Subpart D—What Conditions Must Be Met After an Award?

413.30 What are the restrictions on the use of funds?
413.31 Must a National Center have a director?
413.32 What are the requirements for coordination?
413.33 What substantive studies must the National Center or Centers conduct and submit?
413.34 What activities must be performed during the final year of an award?

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§ 413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§ 413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§ 413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the activities described in paragraphs (a) and (b) of this section.

(a) *Applied research and development activities.* (1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purpose of the Act, including—

(i) Longitudinal studies which extend over a period of years;

(ii) Supplementary and short term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities which include examination of the following:

(i) Economic changes that affect the skills which employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, to include identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs and that address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(xii) The applied research and development activities must include—

(A) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(B) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.* (1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, where appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and non-vocational constituency groups, where appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(xi) The training and leadership development activities must include an emphasis on—

(A) Training minority and female teachers; and

(B) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(3) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404 (b) and (c); House Report No. 101–660, 101st Cong. 2nd Sess. p. 143 (1990))

§ 413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: One that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§ 413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this part 413.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2404)

§ 413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term "institution of higher education" has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§ 413.21 and 413.22, including a reserved 15 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d), the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in §§ 413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) Those institutions or consortiums that rank the highest in each competition will be funded and two awards will be given. If two separate applications from the same institution or consortium of institutions are ranked the highest in both competitions, then one award will be given to that institution or consortium of institutions.

(g) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(h) If an institution or consortium submits two applications and demonstrates that it can effectively carry out both the activities described in §§ 413.3 (a) and (b) either directly or through contracting with other public agencies and public and private institutions of higher education, that institution or consortium may be given up to five preference points in the competition for the research and development center and up to five preference points in the competition for the dissemination and training center.

(Authority: 20 U.S.C. 2404)

§ 413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used.

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project.

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full time at the National Center;

(iii) A clear commitment to the goals of the project;

(iv) Sufficient authority to effectively manage the activities of the National Center; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3;

(2) The applicant's capacity for conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b) whether these activities are carried out between two institutions or within one institution.

(Authority: 20 U.S.C. 2404)

§ 413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b), will be of high quality and effective.

(b) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f).

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§ 413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404 (a)(3) and (b))

§ 413.31 Must a National Center have a director?

A National Center must have a full time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§ 413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§ 413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404 (b)(2) and (c)(2))

§ 413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

414.1 What is the Materials Development in Telecommunications Program?
414.2 Who is eligible for an award?
414.3 What activities may the Secretary fund?
414.4 What regulations apply?
414.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

414.20 What priorities may the Secretary establish?
414.21 How does the Secretary evaluate an application?
414.22 What selection criteria does the Secretary use?
414.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

414.30 What cost-sharing requirements must be met?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§ 414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§ 414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunication entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§ 414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§ 414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunication Program:

(a) The regulations in this part 414.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2412)

§ 414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain for employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§ 414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section based on the criteria in § 414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 414.22.

(Authority: 20 U.S.C. 2412)

§ 414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunication materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in § 414.20(b)(1)–(6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (iii) of the section will commit to the project: and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project:

(ii) The experience and training of key personnel in project management: and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains/competencies of persons being served by the project, especially as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in tech-programs; and

(v) Workers in need of basic skills, vocational instruction, or upgraded job skills.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs: and

(iii) The effect of services on the quality of curriculum, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project: and

(4) Provisions for publicizing the findings of the project at the local, State, and national level.

(Authority: 20 U.S.C. 2412)

§ 414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§ 414.30 What cost-sharing requirements must be met?

(a)(1) *Federal share.* The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR part 74, subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Sec.
415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?
415.2 Who is eligible for an award?
415.3 What activities may the Secretary fund?
415.4 What regulations apply?
415.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

415.20 How does the Secretary evaluate an application?
415.21 What selection criteria does the Secretary use?
415.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

415.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§ 415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§ 415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for—

(1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§ 415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this part 415.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2413)

§ 415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.21.

(Authority: 20 U.S.C. 2413)

§ 415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2413)

§ 415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 415.21, the Secretary may select other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§ 415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

416.1 What is the Vocational Education Training and Study Grants Program?
416.2 Who is eligible for an award?
416.3 What activities may the Secretary fund?
416.4 What regulations apply?
416.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

416.20 How does the Secretary evaluate an application?

416.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

416.30 Which individuals are eligible to participate under this program?
416.31 What are the responsibilities of the grantee?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§ 416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§ 416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§ 416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this part 416.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(a))

§ 416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 416.21.

(Authority: 20 U.S.C. 2414(a))

§ 416.21 What selection criteria does the Secretary use?

(a) *Project design.* (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the **Federal Register** for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in § 416.3; and

(8) The extent to which the management plan provides adequately for monitoring, supervising, and evaluating all entities and individuals participating in the program.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. When subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed program.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the proposal;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed program;

(4) Whether the allocation of time of key personnel to the objectives of the program seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the program being proposed; and

(3) Will use adequate facilities and equipment for the program being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with § 416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of program participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under § 416.3 (a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under § 416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participant's will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Subpart A—General

Sec.
417.1 What is the Vocational Education Leadership Development Awards Program?
417.2 Who is eligible for an award?
417.3 What activities may the Secretary fund?
417.4 What regulations apply?
417.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

417.20 How does the Secretary evaluate an application?
417.21 What selection criteria does the Secretary use?
417.22 What additional factors does the Secretary consider?

Subpart D—What are the Administrative Responsibilities of Institutions?

417.30 What is the role of the institution in the administration of leadership development awards?
417.31 What selection criteria and procedures must an institution use in selecting students?
417.32 What are the special requirements regarding leadership development awards?
417.33 How are funds disbursed and returned?
417.34 Under what circumstances must an institution terminate a leadership development award?

Subpart E—How Does An Individual Apply for a Leadership Development Award?

417.40 Which individuals are eligible for an award?
417.41 How does an individual apply to an institution for a leadership development award?

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

417.50 May a course of study be interrupted?
417.51 Under what conditions must a leadership development award be returned?
417.52 What is the repayment schedule?
417.53 What interest is charged?
417.54 Under what circumstances is repayment deferred?
417.55 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§ 417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§ 417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§ 417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§ 417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this part 417.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(b))

§ 417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Academic year means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 417.21.

(Authority: 20 U.S.C. 2414(b))

§ 417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate documentation that its vocational education program meets the requirements in § 417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in § 417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in § 417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in § 417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Authority: 20 U.S.C. 2414(b))

§ 417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in § 417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What are the Administrative Responsibilities of Institutions?

§ 417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria;

(c) Disbursing and returning funds in accordance with procedures described in §§ 417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§ 417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) an analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of standards in § 417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Authority: 20 U.S.C. 2414(b))

§ 417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) Cover expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b) (2) and (6))

§ 417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See § 417.34(a)

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§ 417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part.

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§ 417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§ 417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§ 417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in § 417.40.

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§ 417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§ 417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in § 417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§ 417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program; or

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§ 417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 417.54.

(Authority: 20 U.S.C. 2414(b))

§ 417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§ 417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

418.1 What is the Vocational Educator Training Fellowship Program?
418.2 Who is eligible for a fellowship?
418.3 What does a fellowship include?
418.4 What regulations apply?
418.5 What definitions apply?

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

418.10 How does the Secretary approve IHEs for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

418.20 Where does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

418.30 How does the Secretary select fellows?

418.31 What criteria must IHEs consider in nominating fellows?
418.32 What additional factors does the Secretary consider in selecting fellows?
418.33 How are funds distributed to a fellow?

Subpart E—What Conditions Must be Met by a Fellow?

418.40 Where may fellows study?
418.41 What are the requirements for an individual to continue to receive a fellowship?
418.42 May fellowship tenure be interrupted?
418.43 May fellows make changes in institutions or fields of study?
418.44 Under what circumstances may a fellowship be discontinued?
418.45 Under what conditions must fellowship payments be repaid?
418.46 What is the repayment schedule?
418.47 What interest is charged?
418.48 Under what circumstances is repayment deferred?
418.49 What is the length of the deferment of repeyment?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§ 418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§ 418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§ 418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the **Federal Register** the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§ 418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this part 418.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(c))

§ 418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§ 418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in § 418.2; and

(2) Should be selected for a fellowship under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§ 418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in § 418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§ 418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility*. The applicant meets the requirements in § 418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability*. The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, where appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills*. Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills*. Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need*. As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Authority: 20 U.S.C. 2414(c))

§ 418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders.

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414(c)(2), (4), and (6)(A))

§ 418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in § 418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in § 418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§ 418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§ 418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§ 418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§ 418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§ 418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§ 418.44 Under what circumstances may a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(c) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§ 418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§ 418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§ 418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 418.48.

(Authority: 20 U.S.C. 2414(c))

§ 418.48 Under what circumstance is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§ 418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.
419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?
419.2 Who is eligible for an internship?
419.3 What activities may the Secretary fund?
419.4 What regulations apply?
419.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

419.20 What are the procedures for applying for an internship?
419.21 How does the Secretary evaluate an application for an internship?
419.22 What selection criteria does the Secretary use?
419.23 What other factors may the Secretary consider?
419.24 How does the Secretary assign interns?
419.25 How is the amount of a stipend determined?
419.26 How is a stipend distributed?

Subpart D—What Conditions Must be Met By an Intern?

419.30 May internships be interrupted?
419.31 Under what conditions may the Secretary discontinue an internship?
419.32 Under what conditions must internship payments be returned?
419.33 What is the repayment schedule?
419.34 What interest is charged?
419.35 Under what circumstance is repayment deferred?
419.36 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§ 419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§ 419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational education.

(Authority: 20 U.S.C. 2414(d)(2))

§ 419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§ 419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this part 419.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(d))

§ 419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

§ 419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the **Federal Register**.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) Parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and

(3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Authority: 20 U.S.C. 2414(d))

§ 419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in § 419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 419.22.

(Authority: 20 U.S.C. 2414(d))

§ 419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Authority: 20 U.S.C. 2414(d))

§ 419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in § 419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§ 419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§ 419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 2414(d))

§ 419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§ 419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§ 419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under § 419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status;

(b) The Secretary will discontinue an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Authority: 20 U.S.C. 2414(d))

§ 419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§ 419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern; or

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§ 419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under § 419.35.

(Authority: 20 U.S.C. 2414(d))

§ 419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§ 419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420 [RESERVED]

22. Part 420 is reserved.

23. A new part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.
421.1 What is the Business and Education Standards Program?
421.2 Who is eligible for an award?
421.3 What activities may the Secretary fund?
421.4 What regulations apply?
421.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

421.20 How does the Secretary evaluate an application?
421.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

421.30 What is the cost-sharing requirement?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§ 421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§ 421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, associations of private and national research organizations.

(Authority: 20 U.S.C. 2416)

§ 421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§ 421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this part 421.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2416)

§ 421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in § 421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 421.21.

(Authority: 20 U.S.C. 2416)

§ 421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicants' approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§ 421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide 50 percent of the cost of the business-labor-education technical committee established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Sec.
422.1 What is the Educational Program for Federal Correctional Institutions?
422.2 Who is eligible for an award?
422.3 What activities may the Secretary fund?
422.4 What regulations apply?
422.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

422.20 How does the Secretary evaluate an application?
422.21 What selection criteria does the Secretary use?
422.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

422.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§ 422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§ 422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, community-based organization of demonstrated effectiveness, or business and industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2417(a))

§ 422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§ 422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a) The regulations in this part 422.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2417)

§ 422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 422.21.

(Authority: 20 U.S.C. 2417)

§ 422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion should be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre and post release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 2417)

§ 422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must be Met After an Award?

§ 422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Authority: 20 U.S.C. 2417)

25. A new part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Sec.
423.1 What is the Vocational Education Dropout Prevention Program?
423.2 Who is eligible for an award?
423.3 What activities may the Secretary fund?
423.4 What regulations apply?
423.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

423.20 How does the Secretary evaluate an application?
423.21 What selection criteria does the Secretary use?
423.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

423.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§ 423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§ 423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every

statement and assurance made in the application.

(Authority: 20 U.S.C. 2418(a))

§ 423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information Clearinghouse.

(c) Projects assisted under this part may not include pre-vocational education, employability skill training, or career education.

(Authority: 20 U.S.C. 2418)

§ 423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this part 423.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2418)

§ 423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 423.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§ 423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for childcare;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a resume), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effective Panel.

(3) The qualifications (as described in a job description or a resume) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available.

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) A description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in § 423.3(b)(3) for dissemination services.

(Authority: 20 U.S.C. 2418)

§ 423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in § 423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Mdt After an Award?

§ 423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2418)

26. A new part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Sec.
424.1 What is the Model Centers of Regional Training for Skilled Trades Program?
424.2 Who is eligible for an award?
424.3 What activities may the Secretary fund?
424.4 What regulations apply?
424.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

424.20 How does the Secretary evaluate an application?
424.21 What selection criteria does the Secretary use?
424.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

424.30 What are the evaluation requirements?
424.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§ 424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§ 424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§ 424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with handicaps and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§ 424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this part 424.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2419)

§ 424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The term *skilled trades* includes, among other occupations, "construction trades" and "firefighting" which are defined as follows:

(1) *Construction trades* means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

(2) *Firefighting* means an instructional program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 424.21.

(e) In addition to points awarded under § 424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§ 424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2419)

§ 424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2419)

§ 424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.
425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?
425.2 Who is eligible for an award?
425.3 What activities may the Secretary fund?
425.4 What regulations apply?
425.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

425.20 How does the Secretary evaluate an application?
425.21 What selection criteria does the Secretary use?
425.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

425.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§ 425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§ 425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§ 425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§ 425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this part 425.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420)

§ 425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 425.21.

(Authority: 20 U.S.C. 2420)

§ 425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The extent to which the project will serve—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in § 425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420)

§ 425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in § 425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§ 425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.
426.1 What is the Cooperative Demonstration Program?

Sec.
426.2 Who is eligible for an award?
426.3 What activities may the Secretary fund?
426.4 What activities does the Secretary fund under the Demonstration Projects?
426.5 What activities does the Secretary fund under the Programs for Model Consumer and Homemaking Education Projects?
426.6 What activities does the Secretary fund under the Community-based Organization Projects?
426.7 What activities does the Secretary fund under the Agriculture Action Centers?
426.8 What regulations apply?
426.9 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

426.20 How does the Secretary evaluate an application?
426.21 What selection criteria does the Secretary use for the Demonstration Projects?
426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?
426.23 What selection criteria does the Secretary use for the Community-based Organization Projects?
426.24 What selection criteria does the Secretary use for Agriculture Action Centers?
426.25 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

426.30 What is the requirement regarding cost-sharing?
426.31 What is the requirement regarding dissemination?
426.32 What are the evaluation requirements?
426.33 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking non-traditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§ 426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in § 426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under § 426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2420a(a))

§ 426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and projects to overcome national skill shortages, as described in § 426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in § 426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in § 426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in § 426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in § 426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects:

(a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b)(1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a (a)(1)-(3) and (b)(1))

§ 426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§ 426.6 What activities does the Secretary fund under the Community-based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in § 426.2(b)(1) to provide in-kind contributions from such schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§ 426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§ 426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420a)

§ 426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in §§ 426.21, 426.22 426.23, or 426.24.

(Authority: 20 U.S.C. 2420a)

§ 426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in § 426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-based Organization Program, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-based Organization Program, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420a)

§ 426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in § 426.21(c)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.23 What selection criteria does the Secretary use for the Community-based Organization Projects?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews the quality of a proposed project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project; and

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews each application to determine the extent to which the proposed Agriculture Action Center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§ 426.21, 426.22, 426.23, or 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§ 426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§ 426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§ 426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420a)

§ 426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

PART 427—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

427.1 What is the Bilingual Vocational Training Program?

Sec.
427.2 Who is eligible for an award?
427.3 What activities may the Secretary fund?
427.4 What regulations apply?
427.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

427.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

427.20 How does the Secretary evaluate an application?
427.21 What selection criteria does the Secretary use?
427.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

427.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§ 427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§ 427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§ 427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (e)(2))

§ 427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 427.

(Authority: 20 U.S.C. 2441(a))

§ 427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§ 427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§ 427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 427.21.

(Authority: 20 U.S.C. 2441(a))

§ 427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) (1) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(i) The employment training need to be met;

(ii) The labor market need to be met; and

(iii) The relationship of the proposed project to other employment training programs in the community.

(2) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the

goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(3) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(4)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information should correspond to the information described in paragraph (a)(1) of this section.

(ii) The estimated job placement rate should be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(b) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(3) How the applicant plans to use its resources and personnel to achieve each objective; and

(4) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and where appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as, a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2441(a))

§ 427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must Be Met After an Award?

§ 427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.
428.1 What is the Bilingual Vocational Instructor Training Program?
428.2 Who is eligible for an award?
428.3 What activities may the Secretary fund?
428.4 What regulations apply?
428.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

428.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

428.20 How does the Secretary evaluate an application?
428.21 What selection criteria does the Secretary use?
428.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§ 428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(b))

§ 428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§ 428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs for out-of-school youth and adults; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§ 428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 428.

(Authority: 20 U.S.C. 2441(b))

§ 428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does One Apply for an Award?

§ 428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by § 428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary Make an Award?

§ 428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in § 428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§ 428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area(s) to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area(s) to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient out-of-school youth and adults.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area(s) to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient out-of-school youth and adults enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient out-of-school youth and adults for employment; and

(2) Potential to increase access to vocational education for limited English proficient out-of-school youth and adults.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after—training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured.

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Authority: 20 U.S.C. 2441(b))

§ 428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with

limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

PARTS 469-498—[RESERVED]

31. Parts 469 through 498 are reserved.

Appendix B—Summary of the Results of Negotiated Rulemaking

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

The purpose of this appendix is to provide a general summary of the results of the negotiated rulemaking conducted pursuant to section 504(b) of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law No. 101-392, 104 Stat. 753 (1990)). Public Law No. 101-392 amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)), effective July 1, 1991. (The law, which becomes effective on July 1, is referred to as the "Perkins Act" or the "Perkins Act as amended" in this appendix.)

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17-18, 1991. Fourteen negotiators chosen by the U.S. Department of Education, including a representative of the Department, participated in the negotiated rulemaking. In addition to the Department's representative, the negotiators included representatives of particular constituent groups listed in section 504(b) of the Act and the Department's ten regions. Prior to the negotiated rulemaking, the Department provided each negotiator with a copy of a summary of the regulatory issues to be negotiated, possible options for resolving the issues, and draft proposed regulations.

This appendix summarizes the negotiations held in each of the three areas in which regulatory issues were submitted for negotiation: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. Within each area, the individual regulatory issues negotiated and the decisions reached, or other recommendations made by the negotiators, are summarized.

Requirements for the Use of Funds

Issue 1: Section 235(a) of the Act provides that recipients must use funds to improve vocational education programs with the full participation of special populations. *How Should the Department Interpret "Full Participation of Individuals who are Members of Special Populations"?*

The draft proposed regulations interpreted "full participation" as requiring a recipient to provide the supplementary services necessary for special population members to succeed in vocational education. The draft proposed regulations provided an example of a supplementary service that a recipient might offer to ensure full participation.

Under the draft proposed regulations, a recipient would be permitted to serve other populations at the same time that it is serving special populations if it meets the requirements in sections 118 and 235 (a), (b), and (c)(1)(C) of the Act.

Decision: Consensus

- All negotiators agreed to the draft proposed regulations, with § 403.74 (a)(2) and (a)(2)(i) (currently § 403.111(a)(2)(i)) of the draft proposed regulations revised to read as follows:

(2) Programs assisted with funds awarded under (section 231 (a) or (d) or section 232 of the amended Perkins Act) must—

(i) Provide for the full participation of individuals who are members of special populations by providing supplementary and other services necessary for them to succeed in vocational education; and * * *

The negotiators intended the phrase "and other" to give additional flexibility by allowing provision of services not included in the definition of "supplementary services" in section 521(38) of the Perkins Act.

- In the example following § 403.74(a)(2) of the draft proposed regulations, the negotiators also agreed to substitute, for the phrase "vocational education course," the phrase "course that is part of a vocational education program." The negotiators also agreed to place the example in a question-and-answer format in the preamble or in an appendix to the regulations rather than within the text of the regulations. (See appendix A).
- As a general matter, the negotiators agreed that the preamble to the regulations should contain a note that examples provided in the regulations or elsewhere are only illustrations of ways in which a recipient of funds can comply with a particular requirement, and are not intended to be exclusive.

Issue 2: Sections 235 (a) and (b) of the Act require recipients to use funds to give priority to a limited number of sites or programs that serve the highest concentrations of special populations. *How Can a Recipient Implement the Requirement to give Priority to a Limited Number of Sites or Programs that Serve the Highest Concentrations of Special Populations?*

The draft regulations repeated the statutory language requiring priority and gave an example of providing priority to a limited number of sites, and an example of giving priority to a limited number of program areas, by ranking sites or programs according to special population enrollment and funding only those above the district-wide average.

Decision: Consensus

The negotiators agreed to the draft regulations with the addition of a third example that will be contained in the regulations after § 403.74(b) (currently § 403.111(b)). The negotiators intended the additional example to illustrate a way of providing new and better opportunities in vocational education for special population members. The added example reads:

Example 3:

First, an LEA or postsecondary institution identifies a site with a high concentration of special populations.

Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site.

Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Issue 3: Section 235(c)(1)(C) of the Act requires recipients to use funds to provide for the equitable participation of special populations, consistent with the assurances and requirements of section 118 of the Act. *How Should the Department Interpret the Requirement To Provide "Equitable Participation"?*

The draft proposed regulations required recipients to provide special population members with an opportunity for participation in vocational education that is equal to the opportunity provided to the general population. The draft regulations provided two examples to illustrate how the equitable participation of special populations may be provided in vocational education programs.

Decision: Consensus

- The negotiators agreed to include only the statutory language in the regulation, revising § 403.74(c)(3) (currently § 403.111(c)) to delete the explanatory language "so that these populations have an opportunity for participation that is equal to the opportunity afforded to the general student population." As revised,

§ 403.74(c)(3) (currently § 403.111(c)(3)) would read:

> (3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in [section 118 of the amended Perkins Act].

- The negotiators also agreed to place the examples that followed § 403.74(c)(3) (currently § 403.111(c)(3)) in a question-and-answer format in the preamble or in an appendix to the regulations, not within the text of the regulations. (See appendix A).

Issue 4: Section 235(c)(1)(B) of the Act requires recipients to use funds in vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240 (11)(B) and (12)(A) (local application). *How Should the Department Interpret the Term "Coherent Sequence of Courses?"*

The draft proposed regulations defined *coherent sequence of courses* to mean a series of courses, or a single course, in which vocational education and academic skills are integrated, so long as the courses or course directly relates to and leads to educational and occupational competencies. The definition specifically provided that competency-based education, academic education, and adult training or retraining that meet these requirements are included in the term "coherent sequence of courses."

Decision: Consensus

- In order to more closely reflect the statutory requirement, the negotiators agreed to delete "or a single course" from the definition of "coherent sequence of courses" in § 400.4(b). As amended, § 400.4(b) would define the term as follows:

> *Coherent sequence of courses* means a series of courses in which vocational education and academic skills are integrated, and that directly relates to, and leads to, both educational and academic competencies. The term includes competency-based education, academic education, and adult retraining that meet these requirements.

- To ensure the eligibility of adult retraining courses for funding, the negotiators agreed to include, in a question-and-answer format in the preamble or in an appendix to the regulations, a statement that the term "coherent sequence of courses" includes sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition. (See the Preamble).

Evaluations Under Standards and Measures

Issue: Section 117 of the Act requires a recipient of title II–C funds to perform an annual evaluation using the Statewide system of standards and measures developed under section 115 of the Act. *What Must a Recipient Evaluate?*

The options for resolving this issue include requiring a title II–C recipient to evaluate:

(1) The recipient's entire vocational education program;

(2) Only those particular projects funded under title II–C; or

(3) Only those projects receiving Perkins funds under the State plan.

The draft proposed regulations reflected option (1), requiring a title II–C recipient to evaluate its entire vocational education program regardless of which specific projects were funded with Perkins Act funds.

Decision: No Consensus

The positions taken by the negotiators included the following:

- Some negotiators preferred option (1), requiring a recipient's entire vocational education program to be evaluated. These negotiators believed that a recipient should evaluate its entire vocational education program to determine if progress was made and that it was not possible to measure the effect of Perkins Act funds alone.
- Other negotiators preferred option (3), which would only require an evaluation of specific projects receiving Perkins Act funds under the State plan. Some of these negotiators agreed that it would be desirable to require recipients to evaluate their entire vocational education programs. However, they believed that recipients will not have sufficient local and State funds to do an acceptable evaluation of their entire programs.

Services and Activities for Special Populations

Issue 1: Section 118(c) of the Act requires a recipient of Title II funds to make certain assurances with respect to providing services to special population members. *To Which Particular Students Do the Assurances Apply?*

The options for resolving this issue include requiring a title II recipient to provide assurances with respect to:

(1) Students in the recipient's projects funded with title II funds;

(2) Students in any of the recipient's projects funded with title II or title III funds under the State plan; or

(3) Students in the recipient's entire vocational education program (including activities funded from non-Federal sources).

The draft proposed regulations reflected option (2), requiring a title II recipient to provide the services described in section 118(c) of the Act for all students who are members of special populations in projects funded with title II or title III funds under the State plan.

Decision: No Consensus

There was some support for each of the options discussed above. The positions taken by the negotiators included the following:

- Option (1), which would only apply the section 118(c) assurances to projects funded under title II, was supported because it takes into account that there will not be sufficient State and local funds available to fulfill a more broadly applied assurance.
- Option (2) was supported with an amendment to the draft proposed regulation to clarify that the section 118(c) assurances were triggered by receipt of title II funds, but applied to any funds received under the State plan (title II or title III of the Act). The negotiators supporting option (2) were concerned that the services and activities required by the section 118(c) assurances be provided to the extent possible with Perkins Act funds but that the limitation on the availability of State and local funds for this purpose also be taken into account.
- Option (3), which would apply the section 118(c) assurances to a recipient's entire program, was supported because it takes into account numerous other statutory requirements, such as those requiring the provision of equitable participation of special population members and requiring Federal funds to be used to improve programs, which dictate that section 118(c) of the Act be given a broad application.

Issue 2: In addition to the assurances required in section 118(c) of the Act, section 118(b) of the Act requires a local educational agency to provide certain information to special population students and their parents. *May a Recipient Spend Only Perkins Act Funds To Provide the Services and Information Required Under Sections 118 (b) and (c) of the Act?*

The options for resolving this issue include:

(1) Permitting a recipient to spend only Perkins Act funds to meet the

requirements of sections 118 (b) and (c) of the Act; or

(2) Requiring a recipient to spend State and local funds, in addition to Perkins Act funds, to meet the requirements of sections 118 (b) and (c) of the Act.

Under the draft proposed regulations, a recipient would only be required to spend Perkins funds to provide the services and activities required in sections 118 (b) and (c) of the Act.

Decision: No Consensus

There was support for both options discussed above. The positions taken by the negotiators included the following:

- Option (1), which would only require expenditures from Perkins funds, was supported by some negotiators who believed that there will not be sufficient State and local funds to support more broadly interpreted requirements under sections 118 (b) and (c) of the Act, but that the requirements should be met to the extent possible with Perkins Act funds.
- Option (2), which would require that recipients spend State or local funds, as well as Perkins Act funds, to provide the services and activities required in sections 118 (b) and (c) of the Act was supported because it met the concern that a contrary interpretation imposing a lesser requirement to provide funding for these services and activities would result in fewer supplemental services being provided to special population members in the Federally-funded projects.

Issue 3: Who Provides the Information Required by Section 118(b) of the Act to Students in a Local Educational Agency That Transferred All of Its Allocation Under Section 231(d) of the Act?

Under the draft proposed regulations, an area vocational education school or intermediate educational agency would provide the information described in section 118(b) of the Act to special population students and their parents in any local educational agency whose allocation was distributed under section 231(d) of the Act in its entirety to the area vocational education school or intermediate educational agency.

Decision: Consensus

All negotiators agreed to the draft proposed regulations.

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Appendix C—Synthesis of Comments from Regional Meetings

In compliance with the provisions of section 504 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), the U.S. Department of Education convened regional meetings during October and November of 1990 to obtain public comment for the development of proposed regulations. The major purpose of the regional meetings was to "provide for a comprehensive discussion and exchange of information" regarding regulatory issues under the Act.

The Act specified that the Secretary of Education identify at least four key regulatory issues for discussion at the regional conferences. Beginning in late August of 1990, the U.S. Department of Education initiated a process to identify these issues by convening a series of focus group discussions with representatives from more than thirty national professional associations with an interest in the administration of the Act. From these discussions, four key regulatory issue areas were identified. The four issue areas were:

- Standards and Measures: Assessment; Evaluation; and Program Improvement.
- State Administration and Leadership.
- Use of Funds and Allocation Among Secondary-Level Eligible Recipients.
- Special Populations.

The regional meetings were held in Philadelphia, Pennsylvania, October 30–31, 1990; Atlanta, Georgia, November 5–6, 1990; San Francisco, California, October 7–8, 1990; and Kansas City, Missouri, November 14–15, 1990. A small group process was utilized at these meetings for discussing the regulatory issues and receiving recommendations from the participants. The participants indicated the issue area of their interest and were assigned to groups of approximately 25 individuals to discuss the issue area. In most cases, there were two small groups assigned to each issue area. Reports of the discussions with recommendations were prepared by each group and presented orally at the conclusion of each regional meeting. Written reports were also submitted by each small group to the U.S. Department of Education for review and comparison across the four meetings.

Summary of Consensus—Non-Consensus

The following charts represent a consensus/non-consensus matrix that summarizes the recommendations and comments from the small groups. Where there was major disagreement as to the recommendations between the small groups with the same issue areas, both perspectives are reported.

CONSENSUS—NON-CONSENSUS MATRIX

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 115(b)1 (b)2: Issue #1	No Consensus on whether to Regulate:	Regulations/Clarification Needed:	Regulatory Guidance Requested:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made similar recommendations.	One group........................	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the U.S. Department of Education (hereafter the Department) define by regulation the measures of performance enumerated in section 115(b) and, if so, how should they be defined?	One group reported that the law, as written, provides sufficient information and does not require further regulation. However, it was recommended that the Department define all key terms in section 115 relating to standards and measures. The other group also reported a need for definitions of terms and recommended regulations as follows: The State, in the development of its system of core standards and measures, shall develop measures for the full range of both academic and occupational skills and knowledge for each program.	The regulations should not be more directive than the Act. However, the Department should provide technical assistance (written guidance and inservice) to further define/clarify certain aspects of this section. Some parts of performance measures described in section 115 (a) and (b) need definitions through regulation.	Performance measures need to be defined in regulatory guidelines. Occupational skills should be included with academic skills in definitions that clarify section 115(b)(1).	Each State shall define the specific measures of performance. In acknowledgment of the diversity among states, the regulations should recognize each State Committee of Practitioners and the State planning process as providing adequate guidance and direction in the development of standards and measures. Further, experimentation and innovation should be allowed and encouraged.
Section 115(a): Issue #2	Regulations/Clarification Needed:	No Consensus on need for Regulations:	Guidelines Requested:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made somewhat different types of recommendations.	No Consensus between groups	One group	Both groups made similar recommendations.
To what extent and in what ways should eligible recipients be allowed to make local modifications to the statewide system of core standards and measures required in section 115(a). Should this be regulated, and, if so how?	One group believed that regulations should indicate that each State plan will describe a process for LEAs to utilize in order to make modifications to the State system of core standards and measures. Furthermore, the fact that the law says that LEAs "may modify" does not automatically empower/entitle the LEA to modify the system. All local modifications must be approved by the State prior to implementation. The other group reported that section 115 adequately addresses the fact that modifications of the State's system are allowable. However, it was recommended that no modifications to the *standards* be made at the local level, rather the locals may make modifications in the *progress* toward reaching the standards.	One group reported that statewide performance measures and standards should be set for program completers. These should not be modifiable locally. LEAs would have flexibility in attainment, and be able to set appropriate exit points, and to give credit for incremental gains. Statewide program performance standards for placement and retention should be set, as appropriate. These standards could be modified based on local conditions and populations served. The other group reported that the Department should not provide further definition or guidance in regulation.	Each State should establish minimum core standards and measures in the State plan as well as the procedures for allowable local modification.	The State plan shall identify the process and establish criteria for local modification of performance standards based on assessment criteria contained in the State plan. Local modification should include evidence of improvement or commitment to improvement. A minority report indicated that local modifications of standards and measures should be made primarily for the purpose of increasing access and participation of special populations and targeted groups. These modifications should be reviewed as an "incentive" to serve more special needs and targeted groups.
Section 115/Section 116: Issue #3	No Regulations Needed:	Guidance Requested:	Guidelines Requested:	No Regulations. Guidance should be provided.
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.
How can consistency be achieved between the standards and measures as required in section 115 of the Act and those required by the JTPA and JOBS programs. Should this be regulated, and if so, how?	No regulations needed	The Perkins Act focuses on a complete integrated system of performance standards and measures, along with components aimed at attaining the standards. JTPA and JOBS focus on parts of a system. Where the two overlap, there should be consistency developed by each state.	Complete consistency between standards and measures in the Perkins Act and JTPA and JOBS cannot be achieved. Where objective measures overlap they should be consistent. A common definition of terms for data collections is needed.	Encourage development of complementary standards in JTPA, JOBS, & the Perkins Act at the State level where there are mutual interests and issues. Each State shall have the flexibility to define the measures and establish standards.
Section 115: Issue #4	Regulations Needed:	Guidance Requested:	Regulations Needed:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Are separate standards and measures needed for secondary and postsecondary levels? Section 115 does not address this issue but the legislative history in the conference report says different standards *may* be established.	There may be several reasons for having separate standards and measures for secondary and postsecondary. Regulations should require that in the development of the State plan and the core system of standards and measures, the State must address whether or not separate standards and measures are needed for secondary, adult, and postsecondary vocational education. If seperate standards and measures are developed, there must be articulation between the sets of standards and measures.	No additional regulations are needed beyond the law and the conference report. The standards may be the same or may be different. It is and should be a state and local decision. Wherever practicable, the same performance measures should be encouraged for secondary and postsecondary levels. Where possible, there should be proficiency levels such that secondary and postsecondary levels as seamless as possible.	Regulations should clarify governance and difference in secondary and postsecondary standards. Maximum flexibility should be given to States and incorporated into the State Plan. In states where there is more than one governing board, it is the responsibility of each to develop their own standards which should be brought together in the State Plan. A minority opinion was that separate standards should not be allowed.	Separate standards and measures for secondary/post secondary should be a state decision. Separate standards and measures may be established by the State Board for secondary and postsecondary or adult programs under the Act. If a State decides to develop two sets of standards and measures, there should be language reflecting articulation.
Section 117: Issue #5 Consensus—Non-Consensus. Should the program evaluation and improvement requirements in section 117 be applied to the entire vocational education program of an eligible recipient or only to those particular programs receiving assistance under the Perkins Act Amendments?.	No Consensus: No consensus within each group. Realizing that State and local education agencies need to evaluate all vocational education programs, two dominate views were considered in each group. First, official evaluation and reporting should follow funding. That is, those programs actually receiving Federal financial assistance must be evaluated and reported for purposes of the Perkins Act. Second, if one occupational program receives federal support, then there should be reporting on the recipient's entire vocational education program. However, concern was expressed about the costs of evaluating all programs. A definition of "program" is needed.	No Consensus: No consensus within or between groups. Majority—The program evaluation and improvement requirements in section 117 should be applied to the entire vocational education program of an eligible recipient. This will be especially important if national evaluations of vocational education focus on comprehensive changes in vocational education. Minority—The evaluation and improvement requirements should be required of programs receiving Perkins Act assistance. Nonbinding guidance should encourage and describe how these evaluations/improvements would apply to all local vocational programs. Regulations should make funds eligible for use to evaluate all local vocational programs.	No Consensus: One group No Consensus: There is a great deal of confusion regarding the definition of a "program." At a minimum, a program should be those programs and activities funded under the Act as described in the State plan.	Regulations Needed: No consensus within or between groups. Only Perkins funded programs will be evaluated under the Perkins law and regulations. Other Perspective: Each recipient of Title II(c) financial assistance shall annually evaluate the effectiveness of programs described in the local applications.
Section 115/Section 117: Issue #6 Consensus—Non-Consensus. Should the standards and measures requirement in section 115 and the program evaluation and improvement requirements in section 117 apply to the State administered programs as well as to the Title II basic grant?	No Consensus: Both groups made generally the same types of recommendations. One group recommended that standards and measures should apply to both Title II and Title III programs. The other group recommended that the State develop appropriate systems for program evaluation for all State administered programs in Title III, which *may* include program appropriate standards and measures.	Regulations Needed: Both groups made essentially the same recommendations. Section 115 should apply to programs under Title III as well as Title II (where appropriate). States should have the option of writing separate or different standards and evaluation criteria for the programs under Title II and Title III.	Regulations Needed: One group Standards and measures apply to state administered programs in Title III as well as to the basic grant and should be consistent in the State plan. This should be clarified through regulations.	Regulations Needed: Both groups made similar recommendations. Responsibility for regulation of Title III should be left to the States. Standards and measures shall be developed for all programs assisted under this Act. The State may establish performance standards and measures for Title III and single parent displaced homemaker and sex equity programs in accordance with the individual program objectives which may or may not be consistent with Sec. 115(b). Program evaluation and improvement requirements in section 117 shall apply to all programs assisted under the Act.
[illegible] and Section 116: Issue #7 Consensus—Non-Consensus.	No Consensus: Both groups made somewhat different types of recommendations.	Regulations Needed: Both groups made essentially the same recommendations.	Regulations Needed: One group	Regulations Needed: Both groups made essentially the same recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
How often should the State assessment be conducted?	One group recommended that regulations indicate that the statewide assessment of the quality of vocational education programs be conducted once for each State plan period. The other group did not reach consensus. However, they indicated that no further regulations were needed for the initial assessment for the State plan.	The statewide assessment should be done each time the new State plan is developed. Regulations should clarify that the assessment should be conducted each time there is a State plan required in the Act (specifically once for the 3 year plan and once for the 2 year plan). However, for the second planning cycle, the criteria in section 116 should be tied to performance standards utilized in the statewide system.	The assessment should be conducted, at a minimum, for each State planning period. This should be defined via regulation.	An assessment shall be conducted prior to the development of the initial 3 year plan and a second assessment prior to the next State plan.

CONSENSUS—NON-CONSENSUS MATRIX

[State Administration & Leadership]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 102(a)(4)(3): Issue #1	No Regulations Needed:	No Regulations Needed:	No Consensus on whether to Regulate:	Flexibility Requested:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What kind of expenditures are allowable under the 5 percent limit for State administration under section 102(a)(4) and under the 8.5% limit for State programs and leadership under section 102(a)(3)? Should the regulations define what the Department will consider to be "technical assistance"? Should allowable expenditures under each setaside be regulated and, if so, how?	Both groups agreed that no regulations are needed as the law is specific enough. One group indicated that "technical assistance" should not be defined while the other group indicated that *if* defined, parameters should be established under which technical assistance would be permissible under section 201. States should be afforded flexibility in providing technical assistance and/or in meeting the requirements of section 102(c) with any funds carried over into years affected by these amendments.	States must have flexibility to address the needs of business and industry if they are to fill a viable role in preparing a competitive workforce. Let the States define what goes under each category and do not define (regulate) technical assistance—that would limit flexibility.	No Regulations: Law is clear concerning the 5% for State administration & the 8.5% for State leadership. No need for further clarity or regulation regarding a definition for technical assistance.	Regulation Needed: Regulation is needed to make permissible or allowable expenditures for technical assistance under State leadership. Assure flexibility for States to define technical assistance but ensure that it will be an allowable expenditure for 8.5% and other setasides. Regulations should be developed which allow States to reserve a portion of the funds for equity, criminal offenders, and each part of Title III for technical assistance and to carry out the provisions of sections. Furthermore, one of the groups went "on record" in their recommendation to provide flexibility to the States through the provision of technical assistance with any funds that are "carried over" from prior years into the years affected by these amendments (July 1, 1991 thru July 1, 1992). The group stated that this was the intent of the managers on the part of the House and the Senate.
Section 118(d): Issue #2	No Regulations Needed:	No Regulations. Guidance would be helpful:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[State Administration & Leadership]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
What should the State Board's responsibilities be for the establishment of procedures for participation and appeals as required by section 118(d)? What kind of "expedited appeals procedure" is required?	No regulations needed as the law states that "The State Board shall establish effective procedures . . ." These procedures are to be included in the state and local plans. Any regulation should be in the form of guidance.	An appeals procedure must be a part of the State plan as required under the law. Guidance may be helpful for some States in identifying procedures to involve parents, teachers, students, and area residents i.e., public meetings or hearings, advisory councils, etc.	The law is clear. There is no need for Federal regulations. However, the requirement of establishing effective procedures for direct participation should be included in the State plan.	Additional regulations are not needed because the "procedures" and the appeal process are to be addressed in the State plan section of the Act. Clarify that appeal procedures must observe minimum due process procedures.
Section 118(d): Issue #3	No Consensus:	No Regulations Needed:	No Regulations Needed:	No Consensus:
Consensus—Non-Consensus.	Both groups made different recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	No Consensus.
Should section 118(d) apply only to programs for special populations or to all programs assisted under the Act?	One group concluded that section 118(d) applied *only* to programs for special populations. A minority report from the other group concurred. The other group reported that regulations should state that section 118(d) applies to *all* programs assisted under the Act and assurances of equal access should be included in each State plan.	"Under the Act" is interpreted to mean participatory planning across the board and, therefore, does meet the needs of special populations. Section 118(d) should apply to all, not just special populations. States should be sure to add other groups to those being served.	The law is clear. There is no need for Federal regulations. Rationale: Section 118(a)(2) assurances refers to "the full range of programs" and section 118(d) refers to "programs under the Act". However, State plans should describe existing procedures for general as well as special populations. Expedited appeals procedures for special populations must be established in the State plan.	No Regulations Needed: The language of section 118(c) which addresses "Assurances" and section 118(d) which addresses "participatory planning" provides the necessary guidelines. No additional guidelines are recommended. Regulations Needed: Regulations should specify that section 118(d) applies to all programs funded by the Act.
Section 115: Issue #4	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Section 115 requires the State board to convene a State Committee of Practitioners "on a regular basis" to review the statewide system of standards and measures. What should the consultative relationship between the State board and the Committee of Practitioners be?	No regulations needed. The relationship with the Committee of Practitioners is advisory. The State Board shall given reasons for not accepting recommendations of the Committee.	States should be given the flexibility to determine the structure and organization for the "committee". The State must consult, but should not be required to take the Committee's advice. The Committee should have access to the State board. These provisions are allowed under the law—no regulations required.	The law is clear. No further regulations needed. The committee is already in place and relationships should be worked out at the State level as jurisdiction is at different levels in different states.	No further regulation is needed as the law says that the committee will "review" and "comment" on the proposal of core standards and measures of performance. Clarify that should any recommendation of the Committee of Practitioners not be acceptable to the State board, the State board shall provide a written explanation of why the recommendation is unacceptable. If a State does not accept the committee recommendations, the law requires a written response.

CONSENSUS—NON-CONSENSUS MATRIX

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 235(b): Issue #1	No Consensus	No Consensus on Regulations:	No Regulations Needed; Guidance Requested	No Regulations; Guidance Needed:
Consensus—Non-Consensus.	The three groups made somewhat different recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Under Section 235(b), how does the requirement to give "priority" to sites or programs with the highest concentrations of special populations relate to the requirement that funds be used in a "limited number of sites or programs?"	Priority means to give first consideration to sites or programs with the highest concentrations of special populations and highest concentration should be calculated differently for secondary and postsecondary. The secondary criteria for highest concentration should follow Chapter 1 guidelines. Another group proposed that the definition of "highest concentration" should be based on a percentage of special populations first, then raw numbers may be used (under the exemption rule). This should be described in the State plan. The State plan must include criteria to invoke an exemption. The third group indicated that clarification was needed on the issue of distribution of funds versus usage of funds for both secondary and post-secondary disadvantaged populations.	*No regulations needed* because it would duplicate Sec. 113(b)(6). State plan must indicate how the State will define "highest concentration" and what criteria will be used to give priority to schools or programs with the highest concentration of special populations. The other perspective was that *regulations are needed*. Federal regulations should require the State to include in the State plan its definitions and expressed methodology for determining highest concentration and how to give priority to limited numbers of programs or sites.	Provide Federal guidelines and keep regulations to a minimum, just enough so State plans can meet the Federal intent. Define measurable criteria to determine "highest concentration" The more discretion given to the State to regulate definitions the better.	Each State should provide guidelines defining and applying the terms "limited numbers," "priority," and "highest concentration". LEAs should describe the process in their local applications. Priority implies preference, not exclusivity.
Section 235(c)(1)(A): Issue #2	No Regulations Needed;	Non-Regulatory Guidance	Regulations Needed:	No Regulations or Guidance Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Pursuant to section 235, under what circumstances and in what ways may vocational education students who are not members of special populations be served? What is meant by the "full participation" and "equitable participation" of members of special populations?	Meeting the "equitable participation" requirements should not mean exclusion of non-special populations. Full participation of members of special populations does not necessarily mean exclusive participation.	Guidelines are needed to assure that priority is given to special populations to ensure that they are represented and benefit from the programs under this section. However, flexibility should be maintained so that non-special population students may also be served in these programs. The State and local units must be held accountable for addressing the needs of special populations but are not precluded from serving the general population. Guidance is needed to define: "Full participation" as allowing any student to participate in a program regardless of the student's status as a regular or special needs student. "Equitable participation" refers to a program that is equally accessible for any student whether regular or special needs.	Clearly written regulations are needed to assure that special needs populations are served, but not segregated. The intent for the use of funds is to serve special populations in the most integrated vocational education setting possible in order to adequately serve special populations. Other populations shall not be excluded. Vocational students who are not members of special populations may be served if they are also users as a result of special populations users and priorities.	Vocational education students who are not members of special populations may be served in those programs on sites that receive Perkins Act funds under the "priority" of serving the "highest concentrations" of special populations. The "full participation" and "equitable participation" of special populations means the assurance that these individuals are actually represented in and benefit from the programs funded under the Act.
Section 113(b)(19): Issue #3	No Consensus:	Regulatory Guidance Needed.	No Regulations, but Guidelines.	No Regulations
Consensus—Non-Consensus.	There was no consensus among the groups.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the comparability requirements in section 113(b)(19) be regulated, and, if so, how?	One group recommended that secondary level comparability regulations should follow Chapter 1 requirements. Another group recommended that comparability *not* be defined as in Chapter 1. The third group recommended that the definition of comparability must reflect services to students, not the cost-per-pupil basis.	Regulations needed to ensure that recipients have the responsibility to assure that overall services are at least comparable to other schools not receiving funds before forwarding funds to such schools. If assurances are not adhered to then States should withhold funds and initiate return of funds from the eligible participant as appropriate. The regulations should include a definition of comparable services, which should include more than level of funding and address level of services to meet needs.	Comparability requirements are already addressed on P. 110, #67 of the Conference Report which indicates that funds must supplement and *not* supplant. Agencies must prove comparable spending from other sources on both funded and non-funded programs under #67 statement above.	Both groups unanimously recommended no binding regulations on comparability, but guidelines should include examples of acceptable measures of comparability. States should describe comparability requirements. LEAs should make assurances in their local applications.
Section 113(b)(19): Issue #4	No Regulations:	No Consensus on Regulations:	Regulations Needed:	Regulatory Guidance Requested:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.
What are the responsibilities of the State and eligible recipient if a school that would otherwise be eligible to receive funds is found to be non-comparable under the provisions of Section 113(b)(19)?	The State plan must address the issue of comparability and should include a remediation process to correct non-comparability. States should provide technical assistance and a grace period, perhaps a year, should be provided when non-comparability is found.	No Regulations Needed/Regulations Needed: The State plan should identify what measures the State will take if a local unit is found "non-comparable." The State plan will outline the State's method for determining comparability.	Comparability guidelines should be included in each State plan. LEAs found in non-compliance should be given a period to bring themselves into compliance. If the time deadline is not met, States should be given authority to withhold funds in the event of non-compliance.	Customary regulatory guidance requested regarding the responsibilities of the States and eligible recipients where non-comparable situations arise.
Sections 116(a)(2); 201(b(2); 235(c)(1)(B); 521(41) Issue #5	Regulations Needed:	Regulations or Non-regulatory Guidance:	Regulations Needed:	No Consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What does the phrase "coherent sequence of courses" as used in section 116(a)(2), 201(b)(2), 235(c)(1)(B), and 521(41) mean? Should this phrase be interpreted by regulation, and if so, how?.	"Coherent sequences of courses" means a series of integrated and interrelated learning experiences, or sequence of study, leading toward development of job skills or advanced study. This would not preclude single courses of study for adult training or competency-based programs.	Define "coherent sequences of courses" and/or its relationship to "sequential course of study". A coherent sequence of courses must be in place but not every student must take every offering. Competency-based instruction is allowable. Do not eliminate single course offerings including those for adult retraining.	Regulations should indicate that "coherent sequence of courses" shall include funds for competency-based programs and single courses where those programs or courses directly lead to marketable skills. The regulations should include a broad definition of "coherent sequence" to include modular structures, units of instruction and upgrading of vocational skills. The regulations should also be flexible for content areas, levels of instruction and needs of students. Vocational programs should be integrated with academic instruction, articulation should be emphasized.	*No Regulation Needed:* A definition is requested/suggested. "Coherent sequence of courses" could apply to competency-based programs, single-course programs, and adult retraining when such programs meet the requirements for integration of academic and vocational curricula and learning. *Regulation Needed:* Regulation is proposed to specify that "vocational students who are enrolled in applied academic courses should be in a *sequential course of study*, as defined in Section 521(29) of the Act, which includes occupational specific courses. Further, these students' applied academics should relate *directly* to their occupational goals. Thus, use of funds for instructional purposes must include occupational specific courses.
Section 231(d)(2)(A) Issue #5	Regulations Needed:	No Regulations Needed	No Regulations Needed:	No consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	No Consensus:

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 231(d) establishes provisions for direct allocations of basic grant funds to area vocational education schools or intermediate educational agencies. Under what circumstances and conditions should these allocations be made?	Funds should be allocated to the area vocational education schools or to intermediate educational agencies to the extent that the area/intermediate school serves the populations intended to be served. Existing consortia should be considered eligible to receive direct allocations of Perkins funds from the State if they were previously authorized for that purpose.	No regulations needed as long as provisions in section 231(d) are met.	Allocation of grants to area vocational schools or intermediate agencies should be determined by individual states under the Act without additional regulations. The State and local plans should provide necessary evidence of compliance with the law. Allocations are spelled out very specifically in the law as passed. No further restrictions in addition to what is now in the law are necessary.	The "relative share of students" calculation may be computed on a full time equivalency (FTE) basis. Each State may determine an appropriate definition of FTE for funding purposes. No regulation or non-binding guidance is needed. There was some discussion in favor of nationwide standardization, at a minimum level.

CONSENSUS—NON-CONSENSUS MATRIX

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118 Issue #1	Regulations Needed:	Guidance Needed:	Regulations: Majority-No, Minority-yes	Regulations Needed:
Consensus—Non-Consensus	One group	One group	One group	Both groups made similar recommendations.
Does section 118 (Criteria for Services and Activities for Individuals Who Are Members of Special Populations) apply only to the Basic Grant or to all programs under the State plan?	Section 118 applies to all programs and at all sites or institutions at the secondary and postsecondary levels, under all titles of the Act. The State must be clear about this and must address this as policy in the State plan. Any State receiving Title II funds must comply with section 118 assurances in the "full range of programs" (section 113 & 118). Also, a program means "total program" (total vocational technical program in that state).	Section 118 sets forth the criteria for services and activities for individuals who are members of special populations and it applies to *all* parts of the Act. Guidance needs to be provided to insure all special population groups are included, i.e., rural-urban disadvantaged, single parents, displaced homemakers, etc..	Consensus—Section 118's criteria for services/activities for individuals who are members of Special Populations applies to all programs under the State plan.	Section 118 (a), (c), and (d) shall apply to all programs and services covered under the Act. Section 118 should have regulations which clarify that provisions in this section apply to all titles of the Perkins Act and are not limited to the Basic Grant programs. *Minority View*—section 118 provisions should be limited to the Basic Grant programs as set down in the State plan. No regulations or guidance is needed.
Section 118, 204 Issue #2	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-No, Minority-yes	No Regulations, Guidance is Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
Under the provisions of section 118, what is the fiscal responsibility, if any, of a State or an eligible recipient to provide equal access from non-Federal funds?	Equal access does not merely mean access to what there are funds for, nor does it mean only at "selected sites." Receipt of Federal funds carries with it the provisions for compliance with Title 1X, EHA, Section 504 of the Rehabilitation Act, and Chapter 1. This should be included in regulations.	Equal access must be applied to all funds supporting the amendments regardless if they are Federal, State or local. This provision must be included in the regulations.	Consensus—Requirements of Section 118 must be met without regard to source of funds.	The State or eligible participant will provide equal access to all programs regardless of the funding source. *Minority*—Section 118 does not impose a financial obligation on States or local education agencies beyond the use of their federally allocated funds. Leave as stated.
Section 118(a)(5)A(i) Issue #3	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-Yes, Minority No	Regulations Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118(a)(5)A(i) specifies that requirements relating to special populations are to be carried out under the general supervision of individuals "who are responsible for students who are members of special populations." How does this provision affect, if at all, the administrative authority of the State Director of vocational education over special population programs?	Every State must have a coordinator of special populations programs with the "sole" responsibility of providing leadership, technical assistance, program coordination and monitoring of the assurances of section 118. The State Director of vocational education has the overall authority for all vocational education programs and services in terms of "general supervision." However, the State Director of vocational education must not work in isolation, but in concert with the vocational special needs coordinator and others to ensure coordination and that assurances for special populations are met.	The Act requires that the requirements, relating to special populations are to be carried out under the general supervision of individuals who are responsible for students who are members of special populations. This does not affect the administrative authority of the State director of vocational education over special populations programs, but does require review of local plans and consultation with the State director of handicapped programs on their appropriateness.	Consensus—State plans must cover the assignment of responsibility of overall supervision as required by Section 118(a)(5)(A)(i) addressing *each* category of special populations as defined in the Act.	It is the responsibility of the State Board and State Director of vocational education to administer the funds and programs under the Carl Perkins Act. Regulations should clarify that section 118(a)(5)(A)(i) refers to the official within, or designated by, the sole State agency which is responsible for vocational education services and not the State official responsible for individuals from each of the special populations.
Section 516(a)(1)(B) Issue #4	Regulations Needed:	Regulations and Guidance Needed:	No Regulations:	Guidance Recommended
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
What expenditures should be exempt from the supplanting requirement in accordance with section 516(a)(1)(B)?	Supplanting can take place to ensure "quality" services only when documentation can be provided and it can clearly be shown as an integral part of the student's IEP and IVTEP.	It is the consensus of the group that as written, this provision may bring about less services to special populations rather than more services. However, to ensure that a reduction of funds to offset the "cost" does not occur, States shall be allowed to regulate programmatic maintenance of effort.	Consensus—There should be *no* specific exemptions and no regulations.	Supplanting may take place to ensure "quality" services only when documentation can be provided and it can be clearly shown to be an integral part of the student's vocational education program. There should be specific language in the State plan to set procedure to allow for supplanting exceptions as needed at the State and local levels.

Appendix D—Reporting Requirements

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National Tech-Prep Education Program (34 CFR part 405), Community Education Employment Centers Program (34 CFR part 408), Vocational Education Lighthouse Schools Program (34 CFR part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415), Vocational Education Dropout Prevention Program (34 CFR part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425), and Cooperative Demonstration Programs (34 CFR part 426) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate—

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401), Native Hawaiian Vocational Education Program (34 CFR part 402), Educational Program for Federal Correctional Institutions (34 CFR part 422), and Bilingual Vocational Training Program (34 CFR part 427) shall—

(1) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding—

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR part 422) shall include in the quarterly performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412) shall submit to the Secretary—

(1) Monthly progress reports summarizing project activities for the reporting period;

(2) Monthly financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award.

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Quarterly performance reports that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each quarter.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR part 416) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award

qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR part 428) shall submit to the Secretary—

(1) A quarterly performance report summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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Appendix B

Education Department General Administrative Regulations

34 CFR Part 76

PART 76—STATE-ADMINISTERED PROGRAMS

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

Sec.
76.1 Programs to which part 76 applies.
76.2 Exceptions in program regulations to part 76.
76.3 ED general grant regulations apply to these programs.

ELIGIBILITY FOR A GRANT OR SUBGRANT

76.50 Statutes determine eligibility and whether subgrants are made.
76.51 A State distributes funds by formula or competition.

Subpart B—How a State Applies for a Grant

STATE PLANS AND APPLICATIONS

76.100 Effect of this subpart.
76.101 The general State application.
76.102 Definition of "State plan" for part 76.
76.103 Three-year State plans.
76.104 A State shall include certain certifications in its State plan.
76.106 State documents are public information.

CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

76.125 What is the purpose of these regulations?
Sec.
76.126 What regulations apply to the consolidated grant applications for insular areas?
76.127 What are the purposes of a consolidated grant?
76.128 What is a consolidated grant?
76.129 How does a consolidated grant work?
76.130 How are consolidated grants made?
76.131 How does an insular area apply for a consolidated grant?
76.132 What assurances must be in a consolidated grant application?
76.133 What is the reallocation authority?
76.134 What is the relationship between consolidated and non-consolidated grants?
76.135 Are there any requirements for matching funds?
76.136 Under what programs may consolidated grant funds be spent?
76.137 How may carryover funds be used under the consolidated grant application?

AMENDMENTS

76.140 Amendments to a State plan.
76.141 An amendment requires the same procedures as the document being amended.
76.142 An amendment is approved on the same basis as the document being amended.

Subpart C—How a Grant Is Made to a State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

76.201 A State plan must meet all statutory and regulatory requirements.
76.202 Opportunity for hearing before a State plan is disapproved.
76.235 The notification of grant award.

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

76.260 Allotments are made under program statute or regulations.
76.261 Realloted funds are part of a State's grant.

Subpart D—How To Apply to the State for a Subgrant

76.300 Contact the State for procedures to follow.
76.301 Local educational agency general application.
76.302 The notice to the subgrantee.
76.303 Joint applications and projects.
76.304 Subgrantee shall make subgrant application available to the public.
76.305 Amendments to applications.

Sec.

Subpart E—How a Subgrant Is Made to an Applicant

76.400 State procedures for reviewing an application.
76.401 Disapproval of an application—opportunity for a hearing.

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

NONDISCRIMINATION

76.500 Federal statutes and regulations on nondiscrimination.

ALLOWABLE COSTS

76.530 General cost principles.
76.532 Use of funds for religion prohibited.
76.533 Acquisition of real property; construction.
76.534 Use of tuition and fees restricted.

INDIRECT COST RATES

76.560 General indirect cost rates; exceptions.
76.561 Approval of indirect cost rates.
76.563 Restricted indirect cost rate—programs covered.

COORDINATION

76.580 Coordination with other activities.
76.581 Methods of coordination.

EVALUATION

76.591 Federal evaluation—cooperation by a grantee.
76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

CONSTRUCTION

76.600 Where to find construction regulations.

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

76.650 Private schools; purpose of §§ 76.651-76.662.
76.651 Responsibility of a State and a subgrantee.
76.652 Consultation with representatives of private school students.
76.653 Needs, number of students, and types of services.
76.654 Benefits for private school students.
76.655 Level of expenditures for students enrolled in private schools.
76.656 Information in an application for a subgrant.
76.657 Separate classes prohibited.
76.658 Funds not to benefit a private school.
76.659 Use of public school personnel.

Sec.
76.660 Use of private school personnel.
76.661 Equipment and supplies.
76.662 Construction.

PROCEDURES FOR BYPASS

76.670 Applicability.
76.671 Notice by the Secretary.
76.672 Bypass procedures.
76.673 Appointment and functions of a hearing officer.
76.674 Hearing procedures.
76.675 Posthearing procedures.
76.676 Judicial review of a bypass action.
76.677 Continuation of a bypass.

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

76.681 Protection of human research subjects.
76.682 Treatment of animals.
76.683 Health or safety standards for facilities.
76.684 Day care services.
76.690 Energy conservation awareness.

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

76.700 Compliance with statutes, regulations, State plan, and applications.
76.701 The State or subgrantee administers or supervises each project.
76.702 Fiscal control and fund accounting procedures.
76.703 When a State may begin to obligate funds.
76.704 When certain subgrantees may begin to obligate funds.
76.705 Funds may be obligated during a "carryover period."
76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.
76.707 When obligations are made.

REPORTS

76.720 Financial and performance reports by a State.
76.722 A subgrantee makes reports required by the State.

RECORDS

76.730 Records related to grant funds.
76.731 Records related to compliance.
76.734 Record retention period.

PRIVACY

76.740 Protection of and accessibility to student records.

Sec.

USE OF FUNDS BY STATES AND SUBGRANTEES

76.760 More than one program may assist a single activity.
76.761 Federal funds may pay 100 percent of cost.

STATE ADMINISTRATIVE RESPONSIBILITIES

76.770 A State shall perform certain duties with respect to the applications for subgrants.
76.771 A State shall encourage eligible applicants to apply.
76.772 Other responsibilities of the State.

COMPLAINT PROCEDURES OF THE STATE

76.780 A State shall adopt complaint procedures.
76.781 Minimum complaint procedures.
76.782 An organization or individual may file a complaint.
76.783 State educational agency action—subgrantee's opportunity for a hearing.

Subpart H—What Procedures Does the Secretary Use To Get Compliance?

76.900 Waiver of regulations prohibited.
76.901 Education Appeal Board.
76.902 Judicial review.
76.910 Cooperation with audits.

AUTHORITY: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

SOURCE: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

§ 76.1 Programs to which part 76 applies.

(a) The regulations in part 76 apply to each State-administered program of the Department.

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980; 47 FR 52354, Nov. 19, 1982; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989; 55 FR 14816, Apr. 18, 1990]

§ 76.2 Exceptions in program regulations to part 76.

If a program has regulations that are not consistent with part 76, the implementing regulations for that program identify the sections of part 76 that do not apply.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

§ 76.3 ED general grant regulations apply to these programs.

The ED general grant regulations in 34 CFR part 74 apply to the programs covered by this part. To find subjects covered under 34 CFR part 74, look in the table of contents at the beginning of 34 CFR part 74.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ELIGIBILITY FOR A GRANT OR SUBGRANT

§ 76.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program covered by this part, the Secretary makes a grant:

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may:

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in part 76 on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989]

§ 76.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute:

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Subpart B—How a State Applies for a Grant

STATE PLANS AND APPLICATIONS

§ 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[52 FR 27804, July 24, 1987]

§ 76.101 The general State application.

A State that makes subgrants to local educational agencies under a program subject to this part shall have on file with the Secretary a general application that meets the requirements of Section 435 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d)

[52 FR 27804, July 24, 1987]

§ 76.102 Definition of "State plan" for part 76.

As used in this part, "State plan" means any of the following documents:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141-143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II-B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational. Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V-B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V-A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III-A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial asistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan a long-range program, and an annual program under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(x) *Client Assistance Program.* The written request for assistance under section 112 of the Rehabilitation Act of 1973, as amended.

(y) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

(z) *Emergency Immigrant Education.* The application under the Emergency Immigrant Education Program.

(aa) *Math-science programs.* The State application under Section 209 of Title II of the Education for Economic Security Act.

(bb) *Programs that do not have regulations.* If a State-administered program does not have implementing regulations, the documents that the authorizing statute for the program requires a State to submit to receive a grant.

(cc) *Carl D. Perkins Scholarship Program.* The application under Section 563 of the Higher Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84060, Dec. 22, 1980; 50 FR 9962, Mar. 12, 1985; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 33188, Aug. 16, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 52 FR 27804, July 24, 1987]

§ 76.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Secretary determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Secretary may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to:

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act;

(3) The application under Sections 141-143 of the Elementary and Secondary Education Act; and

(4) The State application under Section 209 of Title II of the Education for Economic Security Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231g(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985]

§ 76.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Secretary transmits to the State regarding a program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

AUTHORITY: Title V, Pub. L. 95-134, 91 Stat. 1159 (48 U.S.C. 1469a).

§ 76.125 What is the purpose of these regulations?

(a) Sections 76.125 through 76.137 of this part contain requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs listed in paragraph (c) of this section.

(b) For the purpose of §§ 76.125-76.137 of this part the term "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more of the following programs:

CFDA No. and name of program	Authorizing legislation	Implementing regulations, Title 34 CFR (part)
Library Programs		
84.034 Public Library Services State Grant Program	Title I, Library Services and Construction Act (20 U.S.C. 351-354)	770
84.035 Interlibrary Cooperation	Title III, Library Services and Construction Act (20 U.S.C. 355e-355e-2)	770
Postsecondary Education Programs		
84.001 Grants for Construction, Reconstruction, and of Undergraduate Academic Facilities	Title VII, Part E of the Higher Education Act (20 U.S.C. 1132b-1132b-2)	617
84.046 Education Outreach Programs	Title I, Part B of the Higher Education Act (20 U.S.C. 1011-1019)	610
84.135 Aid to Land-Grant Colleges	Second Morrill Act of 1890 (7 U.S.C. 322 and 323)	621
84.176 Carl D. Perkins Scholarship Program	Title V Part E of the Higher Education Act (20 U.S.C. 1119d-1119d-8)	653
Vocational and Adult Education Programs		
84.002 Adult Education—State-administered Programs	Adult Education Act (except) Sections 309, 316 and 318) (20 U.S.C. 1201 et seq.)	426
84.048 Vocational Education—Basic Grants to States	Title I, Part A of the Vocational Education Act (20 U.S.C. 2301-2380)	400
84.049 Vocational Education—Consumer and Homemaking Education	Title I, Part A, Section 150 of the Vocational Education Act (20 U.S.C. 2380)	400

CFDA No. and name of program	Authorizing legislation	Implementing regulations, Title 34 CFR (part)
84.050 Vocational Education—Program Improvement and Services.	Title I, Part A, Section 130-136 of the Vocational Education Act (20 U.S.C. 2350-2356).	400
84.052 Vocational Education—Special Programs for the Disadvantaged.	Title I, Part A, Section 140 of the Vocational Education Act (20 U.S.C. 2370).	400
84.053 Vocational Education—State Advisory Council.	Title I, Part A, Section 105 of the Vocational Education Act (20 U.S.C. 2305).	400
84.121 Vocational Education—State Planning and Evaluation.	Title I, Part A, Sections 102 and 111 of the Vocational Education Act (20 U.S.C. 2302 and 2311).	400
Education for the Handicapped Programs		
84.009 Program for Education of Handicapped Children in State Operated or Supported Schools.	Section 554(a)(2)(B), of Chapter 1 of the Education Consolidation & Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2771-2772).	302
84.027 Handicapped Preschool and School Programs—State Grant Programs.	Education of Handicapped Act Part B (except Section 619) (20 U.S.C. 1411-1418; 1420).	300
84.027 Handicapped Preschool and School Program—Incentive Grants.	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	301
84.155 Removal of architectural barriers to the handicapped.	Section 607, Education of the Handicapped Act (20 U.S.C 1406).	304
Other Elementary and Secondary Programs		
84.010 Educationally Deprived Children—Local Educational Agencies.	Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807).	200
84.011 Migrant Education Programs State Formula Grant Program.	Section 554(a)(2)(A) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2781).	204
84.012 Educationally Deprived Children—State Administration.	Chapter I of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807).	200
84.013 Educationally Deprived Children in State Administered Institutions Serving Neglected and Delinquent Children.	Section 554(a)(2)(C) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C 3803 and 20 U.S.C. 2781).	203
84.068 Indochinese Refugee Children Assistance Act.	Subpart C of the Consolidated Refugee Assistance Act (8 U.S.C. 1522).	537
84.150 Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education.	Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 2811-3862).	298
84.162—Emergency Immigrant Education Program	Title VI of Pub. L. 98-511 (20 U.S.C 4101-4108)	581
84.164 State Grants for Strengthening the Skills of teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.	Title II of the Education for Economic Security Act (20 U.S.C 3961-3971, 3973).	208

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[47 FR 17421, Apr. 22, 1982, as amended at 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 54 FR 21776, May 19, 1989]

§ 76.126 What regulations apply to the consolidated grant applications for insular areas?

The following regulations apply to those programs included in a consolidated grant:

(a) The regulations in §§ 76.125 through 76.137; and

(b) The regulations that apply to each specific program included in a consolidated grant for which funds are used.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.127 What is the purpose of a consolidated grant?

An Insular Area may apply for a consolidated grant for two or more of the programs listed in § 76.125(c). This procedure is intended to:

(a) Simplify the application and reporting procedures that would otherwise apply for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the purposes to be served by the programs that are consolidated.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.128 What is a consolidated grant?

A consolidated grant is a grant to an Insular Area for any two or more of the programs listed in § 76.125(c). The amount of the consolidated grant is the sum of the allocations the Insular Area receives under each of the programs included in the consolidated grant if there had been no consolidation.

Example. Assume the Virgin Islands applies for a consolidated grant that includes programs under the Adult Education Act, Vocational Education Act, and Chapter 1 of the Education Consolidation and Improvement Act. If the Virgin Islands' allocation under the formula for each of these three programs is $150,000; the total consolidated grant to the Virgin Islands would be $450,000.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.129 How does a consolidated grant work?

(a) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jurisdiction, one or more of the programs included in the grant.

Example. Assume that Guam applies for a consolidated grant under the Vocational Education Act, the Handicapped Preschool and School Programs-Incentive Grants, and the Adult Education Act and that the sum of the allocations under these programs is $700,000. Guam may choose to allocate this $700,000 among all of the programs authorized under the three programs. Alternatively, it may choose to allocate the entire $700,000 to one or two of the programs; for example, the Adult Education Act Program.

(b) An Insular Area shall comply with the statutory and regulatory requirements that apply to each program under which funds from the consolidated grant are expended.

Example. Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Adult Education Act. American Samoa need not submit to the Secretary a State plan that requires policies and procedures to assure all students equal access to adult education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.130 How are consolidated grants made?

(a) The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of §§ 76.125 through 76.137 and each program under which the grant funds are to be used and administered.

(b) The Secretary may decide that one or more programs cannot be included in the consolidated grant if the Secretary determines that the Insular Area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the programs.

(c) Under a consolidated grant, an Insular Area may use a single advisory council for any or all of the programs that require an advisory council.

(d) Although Pub. L. 95-134 authorizies the Secretary to consolidate grant funds that the Department awards to an Insular Area, it does not confer eligibility for any grant funds. The eligibility of a particular Insular Area to receive grant funds under a Federal education program is determined under the statute and regulations for that program.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.131 How does an insular area apply for a consolidated grant?

(a) An Insular Area that desires to apply for a grant consolidating two or more programs listed in § 76.125(c) shall submit to the Secretary an application that:

(1) Contains the assurances in § 76.132; and

(2) Meets the application requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of a separate State plan or other similar document required by this part or by the authorizing statutes and regulations for programs included in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that:

(1) Contains a list of the programs in § 76.125(c) to be included in the consolidated grant;

(2) Describes the program or programs in § 76.125(c) under which the consolidated grant funds will be used and administered;

(3) Describes the goals, objectives, activities, and the means of evaluating program outcomes for the programs for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carryover funds of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 53 FR 49143, Dec. 6, 1988]

§ 76.132 What assurances must be in a consolidated grant application?

(a) An Insular Area shall include in its consolidated grant application assurances to the Secretary that it will:

(1) Follow policies and use administrative practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the programs under which funds are to be used and administered, (except requirements for matching funds);

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Submit an annual report to the Secretary containing information covering the program(s) for which the grant is used and administered, including financial and program performance information required under 34 CFR part 74, Subparts I and J;

(6) Provide that funds received under the consolidated grant will be under control of, and that title to property acquired with these funds will be in, a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records, including a copy of the State Plan or application document under which funds are to be spent, which show how the funds received under the consolidated grant have been spent.

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the applicable statutes and regulations.

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the programs, and other interested institutions, organizations, and individuals in planning and operating the programs.

(b) These assurances remain in effect for the duration of the programs they cover.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.133 What is the reallocation authority?

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the allocation described in its consolidated grant application. However, the funds cannot be used for purposes that are not authorized under the programs in the consolidated grant under which funds are to be used and administered.

(b) If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under § 76.131.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any number of programs in § 76.125(c) be included in its consolidated grant and may apply separately for assistance under any other programs listed in § 76.125(c) for which it is eligible.

(b) Those programs that an Insular Area decides to exclude from consolidation—for which it must submit separate plans or applications—are implemented in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.135 Are there any requirements for matching funds?

The Secretary waives all requirements for matching funds for those programs that are consolidated by an Insular Area in a consolidated grant application.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.136 Under what programs may consolidated grant funds be spent?

Insular Areas may only use and administer funds under programs listed in § 76.125(c)(1) during a fiscal year for which the Insular Area is entitled to receive funds under an appropriation for that program.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

§ 76.137 How may carryover funds be used under the consolidated grant application?

Any funds under any applicable program which are available for obligation and expenditure in the year succeeding the fiscal year for which they are appropriated must be obligated and expended in accordance with the consolidated grant application submitted by the Insular Area for that program for the succeeding fiscal year.

(Authority: 20 U.S.C. 1225(b); 48 U.S.C. 1469a)

AMENDMENTS

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in:

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1231g(a))

§ 76.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 76.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.142 An amendment is approved on the same basis as the document being amended.

The Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart C—How a Grant Is Made to a State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

§ 76.201 A State plan must meet all statutory and regulatory requirements.

The Secretary approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.202 Opportunity for a hearing before a State plan is disapproved.

The Secretary may disapprove a State plan only after:

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.235 The notification of grant award.

(a) To make a grant to a State, the Secretary issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallotment to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 3474(a))

[50 FR 29330, July 18, 1985]

§ 76.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Secretary does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart D—How To Apply to the State for a Subgrant

§ 76.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE. See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

§ 76.301 Local educational agency general application.

A local educational agency that applies for a subgrant under a program subject to this part shall have on file with the State a general application that meets the requirements of Section 436 of the General Education Provisions Act.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1232d)

[52 FR 27804, July 24, 1987; 53 FR 49143, Dec. 6, 1988]

§ 76.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of:

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 76.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall:

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1232e)

§ 76.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart E—How a Subgrant Is Made to an Applicant

§ 76.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if:

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if:

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs the State agency that administers the program shall provide an application with notice and an opportunity for a hearing before it may disapprove the application:

(1) Chapter 1 Program in Local Educational Agencies.

(2) Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(8) State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.

(9) Federal, State, and Local Partnership for Educational Improvement.

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(1) Disapproval of or failure to approve the application or project in whole or in part.

(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.* (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1231b-2, 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21775 and 21776, May 19, 1989; 55 FR 14816, Apr. 18, 1990]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

NONDISCRIMINATION

§ 76.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR part 90.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

ALLOWABLE COSTS

§ 76.530 General cost principles.

Subpart Q of 34 CFR part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, *school or department of divinity* means an institution or a component of an institution whose program is specifically for the education of students to:

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

§ 76.533 Acquistion of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

§ 76.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

INDIRECT COST RATES

§ 76.560 General indirect cost rates; exceptions.

(a) Appendices C-F to 34 CFR part 74 include:

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 76.562 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.561 Approval of indirect cost rates.

(a) The Secretary approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.563 Restricted indirect cost rate—programs covered.

If a State or a subgrantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the State or subgrantee shall use a restricted indirect cost rate computed under 34 CFR 75.564-75.568.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[55 FR 14816, Apr. 18, 1990]

COORDINATION

§ 76.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, *basic skills* means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(Authority: 20 U.S.C. 1221e-3(a)(1); 2890)

§ 76.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(Authority: 20 U.S.C. 1221e-3(a)(1))

EVALUATION

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(Authority: 20 U.S.C. 1226c, 1231a, 2831(a), 3474)

[45 FR 86298, Dec. 30, 1980]

§ 76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Secretary may determine that the State or subgrantee meets the evaluation requirements of the program.

(Authority: 20 U.S.C. 1226c; 1231a)

Construction

§ 76.660 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600-75.615.

(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

(c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

Participation of Students Enrolled in Private Schools

§ 76.650 Private schools; purpose of §§ 76.651-76.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 1221e-3(a)(1)).

Note: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

§ 76.651 Responsibility of a State and a subgrantee.

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§76.651-76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same Benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(Authority: 20 U.S.C. 1221e-3(a)(1))

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

CROSS-REFERENCE. See 34 CFR part 74, Subpart C—Bonding and Insurance; and 34 CFR 74.144—Inventions and patents.

PROCEDURES FOR BYPASS

§ 76.670 Applicability.

The regulations in §§ 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass:

CFDA number and name of program	Authorizing statute	Implementing regulations Title 34 CFR part
84 010 Chapter 1 Program in Local Educational Agencies.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).	200
84 151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952, 2971-2976).	298
84 164 Mathematics and Science Education	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
84 186 State and Local Programs	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3191-3197).	None

(Authority: 20 U.S.C. 2727(b), 2972(d)-(e), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989]

§ 76.671 Notice by the Secretary.

(a) Before taking any final action to implement a bypass under a program listed in § 76.670, the Secretary provides the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989]

§ 76.672 Bypass procedures.

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C, 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.673 Appointment and functions of a hearing officer.

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.674 Hearing procedures.

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, representatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.675 Posthearing procedures.

(a) (1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.676 Judicial review of a bypass action.

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under §§ 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)-(D), 2972(h)(2)-(4), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.677 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 2727(b)(3)(D), 2972(f), 1221e-3(a)(1))

[54 FR 21776, May 19, 1989]

§ 76.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Authority: Pub. L. 89-544, as amended)

§ 76.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR part 71 of this title.

(b) The Secretary may waive this requirement by publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.690 Energy conservation awareness.

To the extent that it is consistent with the statute and regulations for any program, the subgrantee shall consider incorporating into its program a component on energy awareness. This component may include study of the problems, solutions, and alternatives relating to the Nation's energy crisis.

(Authority: 42 U.S.C. 8373(b); E.O. No. 12185)

[45 FR 58013, Aug. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 76.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Secretary in substantially approvable form.

(2) The date that the funds are first available for obligation by the Secretary.

(b) (1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Secretary.

(2) If a State plan is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Secretary informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

§ 76.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 76.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 76.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR part 74 (Appendices C-F).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

§ 76.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: U.S.C. 1225(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with:

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1225(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State.	On the first day of the subgrant period.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 55 FR 14817, Apr. 18, 1990]

REPORTS

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C., 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

RECORDS

§ 76.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show:

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1232f)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.734 Record retention period.

A State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1232f(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 55 FR 14816, Apr. 18, 1990]

PRIVACY

§ 76.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 34 CFR part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(Authority: 20 U.S.C. 1231g)

USE OF FUNDS BY STATES AND SUBGRANTEES

§ 76.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(Authority: 20 U.S.C. 1221e-3(a)(1)d, 2831(a), 2974(b))

§ 76.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if:

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

STATE ADMINISTRATIVE RESPONSIBILITIES

§ 76.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of:

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1222c-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.772 Other responsibilities of the State.

(a) A State shall:

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27805, July 24, 1987]

COMPLAINT PROCEDURES OF THE STATE

§ 76.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for:

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

(Approved by the Office of Management and Budget under control number 1880-0513)

CROSS-REFERENCE. See § 76.1 Programs to which part 76 applies.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include:

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 76.401(c)(2)-(7) apply to any request for a hearing under this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Subpart H—What Procedures Does the Secretary Use to Get Compliance?

§ 76.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(Authority: 43 Dec. Comp. Gen. 31(1963))

§ 76.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Secretary.

(b) The regulations for the Education Appeal Board are in 34 CFR part 78.

(Authority: 20 U.S.C. 1234)

§ 76.902 Judicial review.

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. Appendix 3, Sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

[54 FR 21776, May 19, 1989]

Appendix C

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

34 CFR Part 80

§ 79.13 [Reserved]

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
80.1 Purpose and scope of this part.
80.2 Scope of subpart.
80.3 Definitions.
80.4 Applicability.
80.5 Effect on other issuances.
80.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

80.10 Forms of applying for grants.
80.11 State plans.
80.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

80.20 Standards for financial management systems.
80.21 Payment.
80.22 Allowable costs.
80.23 Period of availability of funds.
80.24 Matching or cost sharing.
80.25 Program income.
80.26 Non-Federal audit.

CHANGES, PROPERTY, AND SUBAWARDS

80.30 Changes.
80.31 Real property.
80.32 Equipment.
80.33 Supplies.
80.34 Copyrights.
80.35 Subawards to debarred and suspended parties.
80.36 Procurement.
80.37 Subgrants.

REPORTS, RECORDS RETENTION, AND ENFORCEMENT

80.40 Monitoring and reporting program performance.
80.41 Financial reporting.
80.42 Retention and access requirements for records.
80.43 Enforcement.
80.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

80.50 Closeout.
80.51 Later disallowances and adjustments.
80.52 Collections of amounts due.

Sec.

Subpart E—Entitlements [Reserved]

APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

AUTHORITY: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-102, unless otherwise noted.

SOURCE: 53 FR 8071 and 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§ 80.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

(1) The definition of "State" in this section is used for the purpose of determining the scope of part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than "*equipment*" as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 80.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 80.4(a) (3) through (8) are subject to Subpart E.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 80.6.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Subpart B—Pre-Award Requirements

§ 80.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the pro-

grams, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 80.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 80.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs

borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 80.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 80.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 80.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

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(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 80.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 80.31 and 80.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" have met the audit requirements in that Circular. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, OMB Circular A-133, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 80.36 shall be followed.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circulars A-102, A-128 and A-133)

NOTE: The requirements for non-Federal audits are contained in the Appendix to part 80—Audit Requirements for State and Local Governments.

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 56 FR 1698, Jan. 16, 1991]

CHANGES, PROPERTY, AND SUBAWARDS

§ 80.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 80.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 80.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 80.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair

market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data includ-

ing the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 80.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

§ 80.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees

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are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only:

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 80.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner

that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 80.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 80.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-

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party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements*. For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price*. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price*. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price*. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions*. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 80.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 80.10;

(2) Section 80.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 80.21; and

(4) Section 80.50.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 80.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

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(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 80.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions

taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 80.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 80.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 80.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 80.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 80.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 80.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 80.41(b)(2).

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 80.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolu-

tion of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

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(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

§ 80.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 80.35).

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.44 Termination for convenience.

Except as provided in § 80.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 80.43 or paragraph (a) of this section.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart D—After-the-Grant Requirements

§ 80.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 80.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 80.42;

(d) Property management requirements in §§ 80.31 and 80.32; and

(e) Audit requirements in § 80.26.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Appendix D

General Education Provisions Act—Enforcement

34 CFR Part 81

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

Subpart A—General Provisions

Sec.
81.1 Purpose.
81.2 Definitions.
81.3 Jurisdiction of the Office of Administrative Law Judges.
81.4 Membership and assignment to cases.
81.5 Authority and responsibility of an Administrative Law Judge.
81.6 Hearing on the record.
81.7 Non-party participation.
81.8 Representation.
81.9 Location of proceedings.
81.10 Ex parte communications.
81.11 Motions.
81.12 Filing requirements.
81.13 Mediation.
81.14 Settlement negotiations.
81.15 Evidence.
81.16 Discovery.
81.17 Privileges.
81.18 The record.
81.19 Costs and fees of parties.

Subpart B—Hearings for Recovery of Funds

81.20 Basis for recovery of funds.
81.21 Measure of recovery.
81.22 Proportionality.
81.23 Mitigating circumstances.
81.24 Notice a of disallowance decision.
81.25 Reduction of claims.
81.26 Compromise of claims under General Education Provisions Act.
81.27 Application for review of a disallowance decision.
81.28 Consideration of an application for review.
81.29 Submission of evidence
81.30 Burden of proof.
81.31 Initial decision.
81.32 Petition for review of an initial decision.
81.33 Review by the Secretary.
81.34 Final decision of the Department.
81.35 Collection of claims.
APPENDIX TO PART 81—ILLUSTRATIONS OF PROPORTIONALITY

AUTHORITY: 20 U.S.C. 1221e-3(a)(1), 1234-1234i, 3474(a), unless otherwise noted.

SOURCE: 54 FR 19512, May 5, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.2 Definitions.

The following definitions apply to the terms used in this part:

Administrative Law Judge (ALJ) means a judge appointed by the Secretary in accordance with section 451 (b) and (c) of GEPA.

Applicable program means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

Department means the United States Department of Education.

Disallowance decision means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds. Such a decision, referred to as a "preliminary departmental decision" in section 452 of GEPA, is subject to review by the Office of Administrative Law Judges.

Party means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

Recipient means the recipient of a grant or cooperative agreement under an applicable program.

Secretary means the United States Secretary of Education.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1234 (b), (c), and (f)(1); 1234a(a)(1); 1234i; 3474(a))

§ 81.3 Jurisdiction of the Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the FEDERAL REGISTER.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

§ 81.4 Membership and assignment to cases.

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234 (b) and (c), 3474(a))

§ 81.5 Authority and responsibility of an Administrative Law Judge.

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) An ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3(a)(1); 1234(d), (f)(1), and (g)(1); 3474(a))

§ 81.6 Hearing on the record.

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) Except as otherwise provided in this part or in a notice of designation under § 81.3(b), an ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At a party's request, the ALJ shall confer with the parties in person or by conference telephone call before determining whether an evidentiary hearing or an oral argument is needed.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.7 Non-party participation.

(a) A person or organization, other than a party, that wishes to participate in a case shall file an application to participate with the ALJ assigned to the case. The application must—

(1) Identify the case in which participation is sought;

(2) State how the applicant's interest relates to the case;

(3) State how the applicant's participation would aid in the disposition of the case; and

(4) State how the applicant seeks to participate.

(b) The ALJ may permit an applicant to participate if the ALJ determines that the applicant's participation—

(1) Will aid in the disposition of the case;

(2) Will not unduly delay the proceedings; and

(3) Will not prejudice the adjudication of the parties' rights.

(c) If the ALJ permits an applicant to participate, the ALJ permits the applicant to file briefs.

(d) (1) In addition to the participation described in paragraph (c) of this section, the ALJ may permit the applicant to participate in any or all of the following ways:

(i) Submit documentary evidence.

(ii) Participate in an evidentiary hearing afforded the parties.

(iii) Participate in an oral argument afforded the parties.

(2) The ALJ may place appropriate limits on an applicant's participation to ensure the efficient conduct of the proceedings.

(e) A non-party participant shall comply with the requirements for parties in § 81.11 and § 81.12.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.8 Representation.

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.9 Location of proceedings.

(a) An ALJ may hold conferences of the parties in person or by conference telephone call.

(b) Any conference, hearing, argument, or other proceeding at which the parties are required to appear in person is held in the Washington, DC metropolitan area unless the ALJ determines that the convenience and necessity of the parties or their representatives requires that it be held elsewhere.

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.10 Ex parte communications.

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.11 Motions.

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in § 81.12(d).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery or by mail.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d) (1) The filing date for a written submission to an ALJ or the OALJ is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.13 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f) (1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1) and (h), 3474(a))

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or the approval of a settlement agreement, the ALJ grants the stay.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 554(c)(1), 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.15 Evidence.

(a) The Federal Rules of Evidence do not apply to proceedings under this part. However, the ALJ accepts only evidence that is—

(1) Relevant;

(2) Material;

(3) Not unduly repetitious; and

(4) Not inadmissible under § 81.13 or § 81.14.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.16 Discovery.

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) The ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Make relevant documents available for inspection and copying by the party making the request.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f) (1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234(f)(1) and (g))

§ 81.17 Privileges.

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and the transcript made available to the parties upon request at no charge.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.19 Costs and fees of parties.

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings under this part. Regulations under that statute are in 34 CFR part 21.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f), 3474(a))

Subpart B—Hearings for Recovery of Funds

§ 81.20 Basis for recovery of funds.

(a) Subject to the provisions of § 81.21, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a) (1) and (2))

§ 81.21 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in § 81.22;

(b) In the case of a State or local educational agency, excludes any amount attributable to mitigating circumstances under the standards in § 81.23; and

(c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under § 81.24.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(k), 1234b (a) and (b), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21622, May 19, 1989]

§ 81.22 Proportionality.

(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which it received the grant or cooperative agreement.

(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:

(i) Serving only eligible beneficiaries.

(ii) Providing only authorized services or benefits.

(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.

(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.

(v) Maintaining accountability for the use of funds.

(b) The appendix to this part contains examples that illustrate how the standards for proportionality apply. The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a) and 3474(a))

§ 81.23 Mitigating circumstances.

(a) A recipient that is a State or local educational agency and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the FEDERAL REGISTER under this section;

(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice;

(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and

(4) The recipient's reliance on the guidance was reasonable.

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice;

(2) The request was submitted to the Department at the address provided by notice published in the FEDERAL REGISTER under this section;

(3) The request—

(i) Accurately described the proposed expenditure or practice; and

(ii) Included the facts necessary for the Department's determination of its legality;

(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—

(i) Examined the proposed expenditure or practice; and

(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;

(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;

(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and

(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90-day period.

(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and

(3) The recipient's reliance on the decree was reasonable.

(e) If a Departmental official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(b), 3474(a))

§ 81.24 Notice of a disallowance decision.

(a) If an authorized Departmental official decides that a recipient must return funds under § 81.20, the official gives the recipient written notice of a disallowance decision. The official sends the notice by certified mail, return receipt requested, or other means that ensure proof of receipt.

(b) (1) The notice must state a prima facie case for the recovery of funds.

(2) For the purpose of this section, a prima facie case is a statement of the law and the facts that, unless rebutted, is sufficient to sustain the conclusion drawn in the notice. The facts may be set out in the notice or in a document that is identified in the notice and available to the recipient.

(3) A statement that the recipient failed to maintain records required by law or failed to allow an authorized representative of the Secretary access to those records constitutes a prima facie case for the recovery of the funds affected.

(i) If the recipient failed to maintain records, the statement must briefly describe the types of records that were not maintained and identify the recordkeeping requirement that was violated.

(ii) If the recipient failed to allow access to records, the statement must briefly describe the recipient's actions that constituted the failure and identify the access requirement that was violated.

(c) The notice must inform the recipient that it may—

(1) Obtain a review of the disallowance decision by the OALJ; and

(2) Request mediation under § 81.13.

(d) The notice must describe—

(1) The time available to apply for a review of the disallowance decision; and

(2) The procedure for filing an application for review.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(a), 3474(a))

§ 81.25 Reduction of claims.

The Secretary or an authorized Departmental official as appropriate may, after the issuance of a disallowance decision, reduce the amount of a claim established under this subpart by—

(a) Redetermining the claim on the basis of the proper application of the law, including the standards for the measure of recovery under § 81.21, to the facts;

(b) Compromising the claim under the Federal Claims Collection Standards in 4 CFR part 103; or

(c) Compromising the claim under § 81.26, if applicable.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a); 31 U.S.C. 3711)

§ 81.26 Compromise of claims under General Education Provisions Act.

(a) The Secretary or an authorized Departmental official as appropriate may compromise a claim established under this subpart without following the procedures in 4 CFR part 103 if—

(1) (i) The amount of the claim does not exceed $200,000; or

(ii) The difference between the amount of the claim and the amount agreed to be returned does not exceed $200,000; and

(2) The Secretary or the official determines that—

(i) The collection of the amount by which the claim is reduced under the compromise would not be practical or in the public interest; and

(ii) The practice that resulted in the disallowance decision has been corrected and will not recur.

(b) Not less than 45 days before compromising a claim under this section, the Department publishes a notice in the FEDERAL REGISTER stating—

(1) The intention to compromise the claim; and

(2) That interested persons may comment on the proposed compromise.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a))

§ 81.27 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the OALJ.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision. Upon receipt of a copy of the filed material, the authorized Departmental official who made the disallowance decision provides the ALJ with a copy of any document identified in the notice under § 81.24(b)(2).

(c) An application for review must contain—

(1) A copy of the disallowance decision of which review is sought;

(2) A statement certifying the date the recipient received the notice of that decision;

(3) A short and plain statement of the disputed issues of law and fact, the recipient's position with respect to these issues, and the disallowed funds the recipient contends need not be returned; and

(4) A statement of the facts and the reasons that support the recipient's position.

(d) The ALJ who considers a timely application for review that substantially complies with the requirements of paragraph (c) of this section may permit the recipient to supplement or amend the application with respect to issues that were timely raised. Any requirement to return funds that is not timely appealed becomes the final decision of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(1), 3474(a))

§ 81.28 Consideration of an application for review.

(a) The ALJ assigned to the case under § 81.4 considers an application for review of a disallowance decision.

(b) The ALJ decides whether the notice of a disallowance decision meets the requirements of § 81.24, as provided by section 451(e) of GEPA.

(1) If the notice does not meet those requirements, the ALJ—

(i) Returns the notice, as expeditiously as possible, to the authorized Departmental official who made the disallowance decision;

(ii) Gives the official the reasons why the notice does not meet the requirements of § 81.24; and

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested.

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns.

(c) If the notice of a disallowance decision meets the requirements of § 81.24, the ALJ decides whether the application for review meets the requirements of § 81.27.

(1) If the application, including any supplements or amendments under § 81.27(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of § 81.27, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(e) and (f)(1), 1234a(b), 3474(a))

§ 81.29 Submission of evidence.

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an acceptable application for review under § 81.27.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(c), 3474(a))

§ 81.30 Burden of proof.

If the OALJ accepts jurisdiction of a case under § 81.28, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable;

(b) The recipient discharged its obligation to account properly for the funds;

(c) The amount required to be returned does not meet the standards for proportionality in § 81.22;

(d) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in § 81.23; or

(e) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(3), 1234b(b)(1), 3474(a))

§ 81.31 Initial decision.

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) On the day the ALJ makes the initial decision, the ALJ—

(1) Sends the initial decision to the Secretary; and

(2) Sends the initial decision to each of the parties by hand-delivery or by certified mail, return receipt requested.

(d) For the purpose of this part, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.32 Petition for review of an initial decision.

(a) If a party wishes to obtain the Secretary's review of the initial decision of an ALJ, the party files a petition for review with the OALJ, which sends the petition to the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery or by overnight or express mail.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand-delivery or by overnight or express mail.

(d) A petition for review must contain—

(1) The identity of the initial decision of which review is sought; and

(2) A statement of the reasons asserted by the party for affirming the initial decision, modifying it, or setting it aside in whole or in part.

(e) (1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The OALJ sends the statement to the Secretary.

(2) A party shall serve a copy of its statement of views on the other party on the filing date by hand-delivery or by overnight or express mail.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21726, May 19, 1989]

§ 81.33 Review by the Secretary.

(a) The Secretary reviews the initial decision of an ALJ on the petition of a party under § 81.32. An interlocutory decision of an ALJ is not subject to review except as a part of a review of the ALJ's initial decision.

(b) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case filed during the review process.

(c) (1) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(2) The Secretary, for good cause, may remand the case to the ALJ to take further evidence. The ALJ may make new or modified findings of fact and may modify the initial decision. The new or modified findings, if supported by substantial evidence, are conclusive.

(3) A party may not introduce new evidence after an initial decision unless the Secretary determines that extraordinary circumstances made the introduction of the evidence during the proceeding before the ALJ impossible. If the Secretary permits the introduction of new evidence, the Secretary remands the case to the ALJ.

(d) The Secretary, for good cause, may remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(e) (1) If the Secretary modifies or sets aside an initial decision, in whole or in part, the Secretary's decision includes a statement of the reasons that support it.

(2) The Secretary gives a decision to modify, remand, or set aside to the OALJ, which sends the decision to each of the parties by hand-delivery or by mail. If the decision is mailed, the OALJ sends it certified mail, return receipt requested.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21726, May 19, 1989]

§ 81.34 Final decision of the Department.

(a) The ALJ's initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ's decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ's initial decision, the Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(g), 3474(a))

§ 81.35 Collection of claims.

(a) An authorized Departmental official collects a claim established under this subpart by using the standards and procedures in 34 CFR part 30.

(b) A claim established under this subpart may be collected—

(1) 30 days after a recipient receives notice of a disallowance decision if the recipient fails to file an acceptable application for review under § 81.27; or

(2) On the date of the final decision of the Department under § 81.34 if the recipient obtains review of a disallowance decision.

(c) The Department takes no collection action pending judicial review of a final decision of the Department under section 458 of GEPA.

(d) If a recipient obtains review of a disallowance decision under § 81.28, the Department does not collect interest on the claim for the period between the date of the disallowance decision and the date of the final decision of the Department under § 81.34.

(Authority: 20 U.S.C. 1234(f)(1); 1234a(f)(1) and (2), (i), and (l))

APPENDIX TO PART 81—ILLUSTRATIONS OF PROPORTIONALITY

(1) *Ineligible beneficiaries.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those children. Although the services were authorized, the children were not eligible to receive them.

(2) *Ineligible beneficiaries.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted was 19. Project costs relating to the remaining five students must be returned.

(3) *Ineligible beneficiaries.* Same as the example in paragraph (2), except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute.

Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.

(4) *Ineligible beneficiaries.* Same as the example in paragraph (2), except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the LEA must return its entire award because it did not provide services authorized by the statute.

(5) *Unauthorized activities.* An LEA uses ten percent of its grant under a Federal program that authorizes activities only to meet the special educational needs of educationally deprived children to pay for health services that are available to all children in the LEA. All the children who use the Federally funded health services happen to be educationally deprived, and thus eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the health services. Although the children were eligible to receive program services, the health services were unrelated to a special educational need and, therefore, not authorized by law.

(6) *Set-aside requirement.* A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) *Set-aside requirement.* A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational education services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) *Excess cost requirement.* An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) *Maintenance-of-effort requirement.* An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources for program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1986 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant—the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, the statute made maintenance of expenditures a clear condition of the LEA's eligibility to receive funds and did not provide for a proportional reduction in the grant award, the LEA would be required to return its entire grant.

(10) *Supplanting prohibition.* An LEA uses funds under a Federal drug education program to provide drug abuse prevention counseling to students in the eighth grade. The LEA is required to provide that same counseling under State law. Funds under the Federal program statute are subject to a supplement-not-supplant requirement. Result: All the funds used to provide the required counseling to the eighth-grade stu-

dents must be returned. The Federal funds did not increase the total amount of spending for program purposes because the counseling would have been provided with non-Federal funds if the Federal funds were not available.

(11) *Matching requirement.* A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds were unmatched.

(12) *Application requirements.* In order to receive funds under a Federal program that supports a wide range of activities designed to improve the quality of elementary and secondary education, an LEA submits an application to its State educational agency (SEA) for a subgrant to carry out school-level basic skills development programs. The LEA submits its application after conducting an assessment of the needs of its students in consultation with parents, teachers, community leaders, and interested members of the general public. The Federal program statute requires the application and consultation processes. The SEA reviews the LEA's application, determines that the proposed programs are sound and the application is in compliance with Federal law, and approves the application. After the LEA receives the subgrant, it unilaterally decides to use 20 percent of the funds for gifted and talented elementary school students—an authorized activity under the Federal statute. However, the LEA does not consult with interested parties and does not amend its application. Result: 20 percent of the LEA's subgrant must be returned. The LEA had no legal authority to use Federal funds for programs or activities other than those described in its approved application, and its actions with respect to 20 percent of the subgrant not only impaired the integrity of the application process, but caused significant harm to other Federal interests associated with the program as follows: the required planning process was circumvented because the LEA did not consult with the specified local interests; program accountability was impaired because neither the SEA nor the various local interests that were to be consulted had an opportunity to review and comment on the merits of the gifted and talented program activities, and the LEA never had to justify those activities to them; and fiscal accountability was impaired because the SEA and those various local interests were, in effect, misled by the LEA's unamended application regarding the expenditure of Federal funds.

(13) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law. The grantee's violation has not measurably harmed a Federal interest associated with the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21622, May 19, 1989]

Appendix E

Education Department Audit Requirements

OMB Circular A-128

Subpart E—Entitlement [Reserved]

APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. *Federal financial assistance* means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. *Federal agency* has the same meaning as the term "agency" in section 551(1) of Title 5, Unitied States Code.

d. *Generally accepted accounting principles* has the meaning specified in the generally accepted government adulting standards.

e. *Generally accepted government auditing standards* means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. *Independent auditor* means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. *Internal controls* means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, fairly disclosed in reports.

h. *Indian tribe* means any Indian tribe, band , nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. *Local government* means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. *Major Federal Assistance Program,* as defined by Pub. L. 98-502, is described in the Attachment to this appendix.

k. *Public accountants* means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. *Subrecipient* means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR part 74.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR part 74, Appendix C "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," and 34 CFR part 74, Subpart G, "Cost Sharing or Matching."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statues, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that

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are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is noti-

fied in writing by the cognizant agency to extent the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR part 74, Appendix C, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments.'

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR part 74, Subpart P, "Procurement Standards." The standards provide that while recipients are encouraged to enter into intergovermental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

ATTACHMENT TO APPENDIX

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million

[50 FR 37358, Sept. 13, 1985. Redesignated at 53 FR 8072, Mar. 11, 1988]

Appendix F

Key Education Department Decisions

1. CONSOLIDATED APPEALS OF THE STATE OF FLORIDA, Dkt. No. 29-293-88, 33-297-88. (1990)

The Florida State Education Department assigned vocational education administrative responsibility to individuals outside the Division of Vocational Education. The auditors did not locate contemporaneous time and effort documentation for their salaries. On appeal, Florida placed in evidence affidavits from supervisors, examples of work product and quarterly certifications to document the effort allocable to vocational education. Florida also submitted evidence of additional effort allocable to vocational education state administration in order to offset any disallowances for employees that should not have been charged to federal vocational grants. The Education Appeal Board (EAB) ruled in favor of Florida on every issue, finding that the evidence supported the effort of the questioned employees and Florida was entitled to the equitable offset. The Secretary sustained the decision. The case is frequently cited by state and local recipients to show that the principle of equitable offset is applicable under the federal vocational education grant.

2. APPEAL OF THE STATE OF WYOMING, Dkt. No. 16(191) 85

This 1987 EAB decision is under appeal in the U.S. Court of Appeals. The case dealt with a series of sub-grants that Wyoming made in 1981 and 1982 under the VEA Amendments of 1976. The individual sub-grants raise questions as to compliance with the "excess costs" principle for serving the disabled and disadvantaged. The decision is noteworthy because the EAB held:

(1) That non-federal matching funds had to meet all the same requirements as the federal funds, and

(2) that a state must satisfy setaside requirements based on the state's total allotment, not on the amount drawn down from the letter of credit. Thus, if a state was required to spend 10 percent of its $1 million allotment for the disabled, it must spend $100,000 even if the state only draws down $800,000 from its basic grant.

3. APPEAL OF THE STATE OF SOUTH DAKOTA, Dkt. No. 17 (127)83

The Education Department questioned expenditures for disabled and disadvantaged services made in 1979 and 1980. South Dakota argued that since its State Plan was approved, the Department is stopped from recouping the federal expenditures. The state argued that the administrative costs of student aid offices should qualify as disadvantaged excess costs. The EAB found no evidence that only disadvantaged students were served by the student aid office and rejected the state's position.

F

4. APPEAL OF THE STATE OF TEXAS, Dkt. No. 14 (124)83

This 1985 EAB ruling held that Texas failed to properly expend its 1980 grant funds for disabled and disadvantaged projects under the 1976 VEA Amendments. According to the EAB, the state must allocate its federal grant in accord with its approved State Plan. Further, the 1976 VEA Amendments required adherence to a prescribed formula to distribute funds which Texas did not follow. Neither did Texas comply with the "excess costs" provisions for serving the disabled and disadvantaged. If federal funds are used to pay 100 percent of the cost of a program for the disabled, then participation of non-disabled students in the program is not permissible, according to the EAB ruling.

5. APPEAL OF THE STATE OF CALIFORNIA, Dkt. No. 12 (122)83

Under the Tydings Amendment, local districts had 24 months to obligate funds. This period was extended to 27 months in 1975.

Prior to 1982, the applicable regulations were met if the obligation was made during the 27-month period. It did not matter if accounting for the obligation took place more than 27 months after they were expended. In 1982, the Office of Inspector General (OIG) advised the Secretary that many state and local districts were accounting for obligations after the Tydings period had closed. The OIG felt that this practice in effect converted "fixed terms" funds (funds available for a limited period of time) to "no year" funds (funds with no such limitation). Thus, the OIG argued, budgetary constraints placed on appropriations by limiting their period of availability had been subverted contradictory to Congressional intent.

At issue in California was more than 1 million dollars of expenditures in federal funds, which the Education Appeal Board held had not been linked properly to the underlying obligations within the Tydings period. The Secretary held:

> "It is true that a recipient must use an objective, definitely determinable method or principle to demonstrate that all obligations claimed against a given fiscal year's appropriations *actually* arise within the Tydings period. It does not follow, however, that the method or principle itself must be implemented within the Tydings period, so as to produce a completely reconciled set of books as of the close of the Tydings period." (emphasis in the original).
>
> The Secretary commented that such an interpretation of Tydings would impose unnecessary restrictions on the states and that, therefore, "[a] obligations may be debited to a specific source of funds after the close of the Tydings period *as long as* there is *clear* and *unambiguous* documentation showing that the transaction giving rise to the obligation occurred before the relevant Tydings cutoff date" (emphasis in the original). An accounting method used by a state should "identify the source and application of the funds."

6. APPEAL OF THE STATE OF MASSACHUSETTS, Dkt. No. 14-107-82

The Massachusetts decision raised several issues pertaining to the 1968 and 1976 VEA Amendments. First, the EAB ruled that no federal VEA funds may be used for construction prior to the approval of the local application by the State Board. Second, a local district that incurs cost overruns on a project may not seek after-the-fact reimbursement from the state. The local must have authority from the state first in order to incur these additional charges to the federal grant. Third, in regard to the issue of time and effort allocable to the VEA grant, the EAB held that when the best evidence is not available, sworn affidavits and other time records may be used as evidence of compliance with the regulations. Fourth, when the statute requires that due consideration be given to local needs, the state may not disregard these factors even if the project is designed to satisfy regional needs.

7. APPEAL OF MICHIGAN, Dkt. No. 13 (188)85

In this case, the Secretary ruled in favor of Michigan on the meaning of "obligation" under the five-year statute of limitations. The Secretary held that the date of an expenditure under the VEA is the date the LEA actually obligated the funds, not the date when the state authorizes the subgrantee to use the funds in question. If a state uses a reimbursement system, the state must provide proof of actual expenditures by the LEA showing that the expenditure occurred prior to the statute of limitations cut-off date.

8. APPEAL OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT, Dkt. No. 26-91-81.

The Education Department's Office of General Counsel recommended that where a recipient permits federal funds to lapse, the statute of limitations begins to run on the day the recipient permitted the funds to lapse. If the project period ended more than five years prior to the Department's issuance of the final determination letter, the statute of limitations would bar recovery of the unexpended funds. For example, if a state or local agency failed to obligate its entire FY 1985 grant award by September 30, 1986, (the lapsed date), then the Education Department would be barred from recovering any of these unexpended funds after September 30, 1991. The Secretary accepted this OGC interpretation.

INDEX

A

Academic year, definition of, A-17, A-75

Accountability, 27, 28, A-3, A-5, A-11, A-28, A-32, A-67, D-8

Accounting system, B-25

Accrued expenditures, definition of, C-3

Accrued income, definition of, C-3

Acquisition
- cost, definition of, C-3-4
- definition of, A-14

Act, definition of, A-14, A-60

Act of April 16, 1934, A-17, A-19, A-20, A-22

Act of November 2, 1921, A-62

Activities, A-11, D-13
- See also specific program or activity

Acute economic need, definition of, A-20

Adequacy of resources, A-12
- See also specific program

Administration, definition of, A-14

Administrative costs
- and Basic Programs, 11, 12, A-43, A-45
- and the Business-Labor-Education Partnership for Training Program, A-40, A-43, A-45
- and the Comprehensive Career Guidance and Counseling Program, A-39, A-43
- and the Consumer and Homemaking Education Program, A-43
- and corrections educational agencies, A-45
- and fiscal requirements, A-8,9
- and "necessary and reasonable" cost, A-9
- and the Postsecondary Vocational Education Program, A-8
- and the Program for Criminal Offenders, A-43
- and recipients, A-8, A-45
- and the Secondary Vocational Education Program A-8
- and Special Programs, A-43, A-45
- and the State-Administered Tech-Prep Education Program, A-9
- and the State Board for Vocational Education, A-8-9
- and the State Vocational and Applied Technology Education Program, A-8,9, A-24, A-31
- and student aid, F-3
- and the Supplementary State Grants Program, A-53
- and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-60, A-62
- and use of funds, A-8,9
- and the Vocational Education Support Programs by Community-Based Organizations, A-43

Administrative Law Judges, Office of, 14, 15, 18, 45-46, D-3-7

Administrative requirements, definition of, C-4

Administrators, training of, A-67, A-69, A-70, A-75, A-86, A-90

Adult, Career and Vocational Education Center, A-86, A-110

Adult education, 24, A-28, A-90

Adult Education Act, A-30, B-7

Adult learning centers, A-40

Adult Vocational Education Program
- activities funded by the, A-34
- and administrative costs, A-8
- allocation/reallocation of funds in the, A-7,8, A-24, A-28, A-30, A-36, A-37
- and assessment/evaluation, A-3
- as a Basic Program, 10, A-31
- definitions applying to the, A-24, A-36,37
- eligibility for the, A-24, A-33
- and fiscal requirements, A-8
- and the JTPA, A-37
- and minimum grant amounts, A-7, A-36
- and Pell Grant recipients, A-36, A-37
- priorities in the, A-34
- reserving funds for the, A-36, A-41
- and special populations, A-33, A-34
- and the state plan, A-28, A-34
- use of funds in the, A-33,34, A-43
- waivers in the, A-8, A-24, A-37

Advances
- and after-the-grant requirements, C-31
- cash, C-25, C-31
- and collection of amounts due, C-31
- interest earned on, C-11
- and payments to grantees, C-10
- request for, C-27, C-28
- unobligated, C-31
- working capital, C-10

ADVOCNET Systems, A-65

Affirmative action, and procurement, C-22,23

Age Discrimination Act [1975], 14

Agriculture Action Centers, A-10, A-92, A-93, A-95

Aid to Families with Dependent Children, A-15, A-16, A-36, A-37

Alaskan Native Claims Settlement Act, A-20, A-60, C-4

All aspects of an industry, definition of, A-14

Allowable costs
- and audits, 7, 8
- and capital expenditures, 34
- and compliance, 40
- and cost allocation plans, 37
- and costs incurred prior to effective date of grant, 34
- criteria for, 31
- examples of, 6, 31-34
- and facilities, 34
- guidelines concerning, 15, 18
- and personnel expenses, 32, 34
- and procurement guidelines, 32
- and records, 32
- and regional meetings, A-105
- and state-administered programs, 12, A-105, B-16
- and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-62
- and the Uniform Administrative Act, C-9, C-11-12, C-14
- and the Vocational Educator Training Fellowship Program, A-78
- and waivers, 34
- See also Audits; Prior approvals

Amendments
- to applications, B-14
- approval of, B-13
- and state-administered programs, B-12-13, B-14
- to the state plan, B-12

"America 2000. An Educational Strategy," A-3, A-5

Appeals
- and area vocational education schools, 10
- of audits, 8, 15, 45-46, 49, B-27
- and Basic Programs, 10
- and the General Education Provisions Act, 15
- and local educational agencies, 10
- and the Secondary Vocational Education Program, A-24, A-36
- and state-administered programs, A-106, B-27
- and the State Board for Vocational Education, A-36, A-106
- See also Hearings

Applicable programs, definition of, 13, D-3

Applicant, definition of, A-14

Applications
- amendments to, B-14, C-8
- and audits, 25
- checklist for, 25-26
- contents of, 25-26, A-43
- definition of, A-14
- forms for, C-7-8
- hearings about, B-14-16, D-14
- local, 56
- preparation of, A-45
- and reserving funds, A-41
- and state-administered programs, B-14-16, B-19, B-26
- unsolicited, A-9
- See also specific program

Apprenticeships
- and the Adult Vocational Education Program, A-34
- and Basic Programs, 24, A-31
- and the Business and Education Standards Program, A-82
- and the Business-Labor-Education Partnership for Training Program, 12, A-29, A-40
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Cooperative Demonstration Program, A-93
- and the Model Centers of Regional Training for Skilled Trades, A-88
- and the National Tech-Prep Education Program, 29, A-49

  - and the Postsecondary Vocational Education Program, and apprenticeships, A-34
  - and the Secondary Vocational Education Program, A-34
  - and the State-Administered Tech-Prep Education Program, 29, A-50-51, A-52
  - and the State Vocational and Applied Technology Education Program, A-30, A-32
- **Apprenticeship training program, definition of, A-14-15**
- **Area vocational education schools**
  - and the Adult Vocational Education Program, A-33
  - and appeals, 10
  - and Basic Programs, 10, 23
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - and the Community Education Employment Centers Program, A-54
  - and cooperative projects, 10
  - definition of, A-15
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and the Displaced Homemakers Program, A-33
  - and the economically disadvantaged, 10
  - as eligible recipients, A-16, A-36
  - and equipment, 25
  - and equitable/full participation, A-48
  - and the Postsecondary Vocational Education Program, A-33
  - and regional meetings, A-109
  - and the Secondary Vocational Education Program, A-24, A-33, A-35-36
  - and sex discrimination/stereotyping, A-26
  - and the Single Parent Program, A-33
  - and the Single Pregnant Women Program, A-33
  - as small entities, A-11
  - and special populations, A-6, A-48, A-102
  - and the State-Administered Tech-Prep Education Program, A-52
  - and the State Vocational and Applied Technology Education Program, A-30
  - and use of funds, A-102, A-109
  - and the Vocational Education Dropout Prevention Program, A-85-87
  - and the Vocational Education Lighthouse Schools Program, 12, A-57
- **Articulation**
  - and assessment/evaluation, A-47
  - and the Cooperative Demonstration Program, A-95
  - and the Consumer and Homemaking Education Program, A-95
  - and the National Center or Centers for Research in Vocational Education, A-66, A-67
  - and the State-Administered Tech-Prep Education Program, 29, A-52
- **Articulation agreement, A-51**
- **Assessment/evaluation**
  - and accountability, A-11
  - and articulation between secondary and postsecondary institutions, A-47
  - and a coherent sequence of courses, A-47
  - content of, A-46-47
  - and demonstration programs, A-11
  - and the disadvantaged, A-47
  - frequency of, A-47, A-105
  - and the integration of vocational/academic courses, A-47
  - invitation to comment on guidelines for, A-13
  - and local recipients' requirements, A-43, A-44
  - and negotiated rulemaking, A-4, A-7, A-101
  - and the Paperwork Reduction Act [1980], A-11
  - and the Program Effectiveness Panel, A-17
  - and recipients' role, A-3, A-6, A-7
  - and regional meetings, A-102-5
  - and reserving funds, A-41
  - and sex discrimination/stereotyping, A-26
  - and special populations, A-44, A-47
  - and state-administered programs, 27, 28, B-11, B-17-18, B-26
  - and the State Board for Vocational Education, A-25, A-29, A-46
  - and the State Council on Vocational Education, A-27, A-28
  - and state/local needs, A-47
  - and the state plan, 9, A-6, A-28, A-30, A-47
  - state responsibility for, 9-10, 11, A-3, A-6-7, A-25, A-46
  - and technical assistance, A-47
  - third-party, A-11
  - and training programs, A-11
  - and use of funds, A-101
  - See also Program improvement; Program improvement plans; specific program
- **Assistance to States for Education of Handicapped Children, B-15**
- **Assistant Secretary, definition of, 55**
- **Audit exception, definition of, 55**
- **Audits**
  - A-128, 7, 39-46, 55
  - adjustments, C-31
  - agency review of, 44-45
  - and allowable costs, 8
  - and amount of grant, 7, 39, C-15, E-6
  - appeal of, 8, 15, 45-46, 49, B-27
  - and applications, 25
  - and audit committees, 41-42
  - and the audit process, 39-46
  - and audit reports, 41, 44-45, E-6-7
  - and cognizant agencies, 40, E-5-6
  - and compliance, 8, 40, 49, C-15, E-4-5, E-6
  - cooperation with, B-28
  - and cost sharing/matching, 8, 40, 49-50, E-4
  - costs of, 40, E-7
  - definitions concerning, E-3
  - and eligible recipients, 8, 40, E-4
  - and equipment, 25
  - and equitable distribution, 47-48
  - "federal", 7, 41, 42
  - and formulas, 48
  - frequency of, 40, E-4
  - and General Education Provisions Act, 14, 15
  - generally accepted government auditing standards, 39
  - goals/purpose of, 7-8, E-4
  - and illegalities, E-6
  - and imputed expenses, 51
  - initiating, 41
  - and institutions of higher education, 40, C-15, E-4
  - and internal controls, 8, 40, C-9, E-3, E-4-5, E-6
  - key concerns about, 47-51
  - and mediation, 45, D-6
  - methods for avoiding difficulties with, 53
  - non-federal, C-15
  - and the OALJ, 14, E-3-7
  - and offset expenses, 50-51
  - participating in, 43-44
  - policy about, E-3
  - preparing for, 41-43
  - and proportionality, 50
  - and prorated allowances, 51
  - and records, 25, 40, 41, 42, 43, 47-48, 49, B-25, C-15, C-29
  - requirements for, 7, E-3-7
  - resolution of, 40, 41, 44-45, E-6
  - and the retention of audit reports/workpapers, E-6-7
  - and sanctions, 7, 40, C-10, E-7
  - scope of, 40, E-3-4
  - and selection of auditors, 41, C-15, E-7
  - and staff preparation, 42-43
  - and state-administered programs, A-53, B-27, B-28
  - and the statute of limitations, 49
  - and subrecipients, 40, C-15, E-5
  - and supplanting funds, 8, 40, 48-49
  - and technical assistance, E-5
  - types of, 7-8
  - and waivers, 45, 50
  - See also Disallowance decisions
- **Awarding agency**
  - definition of, C-4
  - review and procurement, C-23
- **Awards**
  - definition of, A-14, B-28
  - notification of, B-13-14
  - repayment of, A-79, A-80
  - return of, A-76, A-77
  - suspension of, 40, C-30
  - termination of, C-30

B

- **Basic grant, definition of, 55**
- **Basic State Grant Programs**
  - activities funded by, 10, 11, 20, A-24, A-31
  - and administrative issues, 12, A-24, A-31, A-43, A-45
  - allocations for, 10, 12, 22
  - and appeals, 10
  - applying for, 25-26
  - and assessment/evaluation, 11
  - common questions asked about, 20-21
  - and comparability, 21
  - and cooperative projects, 10
  - eligibility for, 10, 19-24
  - and eligible recipients, 10
  - financial conditions for, A-24, A-42
  - overview of, 10, 11, 12
  - purpose of the, A-24, A-31
  - and regional meetings, A-109
  - reserving funds for, A-24, A-40-41
  - and special populations, A-109
  - and use of funds, 10, 11, 24, A-109
  - and waivers, 10
  - See also specific program
- **Basic skills, definition of, B-17**
- **Bid guarantees, C-24**
- **Bilingual Materials, Methods, and Techniques Program, 11, A-14**
- **Bilingual programs.**
  - See Limited English proficiency; specific program
- **Bilingual Vocational Instructor Training Program, 11, A-11, A-14, A-95-98, A-98-100, A-110, A-112**
- **Bonds**
  - payment, C-24
  - performance, C-24
  - and procurement, C-24

Budget, definition of, A-14
Budget changes, C-15
Budget/cost effectiveness, A-11
Budget period, definition of, B-28
Burden of proof, 22, D-10-11
Bureau of Indian Affairs
  and the Adult Vocational Education Program, A-7, A-36
  and Basic Programs, 10
  and the Business-Labor-Education Partnership for Training Program, A-40
  definition of, A-20
  and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  and the Postsecondary Vocational Education Program, A-7, A-17, A-36
  and the State-Administered Tech-Prep Education Program, A-52
  See also Indian Vocational Education Program
Business and Education Standards Program, A-10, A-14, A-82-84
Business-Labor-Education Partnership for Training Program
  activities funded by the, 11, 12, A-24, A-39-40
  and administrative issues, A-40, A-43, A-45
  and age limits, A-40
  and allowable costs, 12
  amount of grants for the, A-29-30
  distribution of funds for the, A-29
  eligibility for the, A-24, A-37, A-40
  fiscal requirements for the, A-8-9, A-24, A-40
  and incentives for coordination, A-40
  and the JTPA, A-40
  and the National Tech-Prep Education Program, A-40
  priorities in the, A-29
  special considerations in making awards in the, A-4, A-40
  and special populations, A-29
  as a Special Program, 12, A-37
  and the State Board for Vocational Education, A-24, A-29, A-39
  and state needs, A-40
  and the state plan, A-39-40
  and urban/rural areas, A-40
  use of funds in the, A-40
By-pass provisions, B-18, B-20-21, B-22

C

Capital expenditures, 34, 35, A-60, A-62, C-13
Career Education Incentive Act, B-7
Career guidance and counseling
  and the Adult Vocational Education Program, A-34
  and Basic Programs, 23, 24
  and the Bilingual Vocational Instructor Training Program, A-98
  and the Bilingual Vocational Training Program, A-97
  and the Business-Labor-Education Partnership for Training Program, A-29, A-40
  and the Community Education Employment Centers Program, A-56, A-57
  and the Cooperative Demonstration Program, A-93, A-94
  definition of, A-15
  and the Demonstration Centers for the Training of Dislocated Workers, A-71
  and the Displaced Homemakers Program, A-33
  and the Educational Program for Federal Correctional Institutions, A-84
  information delivery system for, A-47
  and local recipients' requirements, A-43, A-44
  and the Materials Development in Telecommunications Program, A-69
  and the Model Centers of Regional Training for Skilled Trades, A-88
  for parents, A-56
  and the Postsecondary Vocational Education Program, A-34
  as preparatory services, A-17
  and the Secondary Vocational Education Program, A-34
  and sex discrimination/stereotyping, A-26
  and the Sex Equity Program, A-33
  and the Single Parent Program, A-33
  and the Single Pregnant Women Program, A-33
  and the State Board for Vocational Education, A-5, A-29
  and State Leadership Activities, A-32
  and the state plan, A-5
  state's responsibilities for, A-47
  and the State Vocational and Applied Technology Education Program, A-29
  and the Vocational Education Leadership Development
  Awards Program, A-75
  and the Vocational Education Lighthouse Schools Program, A-57
  and the Vocational Education Support Programs by Community-Based Organizations, A-38
  See also Comprehensive Career Guidance and Counseling Program
Carl D. Perkins Scholarship Program, B-7
Carl D. Perkins Vocational and Applied Technology Education Act Amendments [1990]
  background information about the, A-3
  changes from previous act in the, 9, A-3
  effective date of the, 11
  general/major provisions of the, 11, 12, 16, A-3, A-4-11
  purpose of the, 9, A-3
  regulations applying to the, 7, 14, 16 Appendix A
Carl D. Perkins Vocational Education Act [1988], A-3, A-7, A-9, A-29, A-40-41
Carryover funds, 13, 49, B-12, B-24
Cash advances, C-25, C-31
Cash contributions, definition of, C-4
Cash management, C-9-10
Cease and desist hearings, B-27
Center for the Advancement of Pacific Education [CAPE], A-31
Chapter 1, definition of, A-15
Child care costs, A-40
Civil rights, 11
Civil Rights Acts, 14, 16
Closeout, 14, C-31
Cognizant agencies, 40, E-3, E-5-6
Coherent sequence of courses
  and adult education, A-101
  and the Adult Vocational Education Program, A-4, A-34
  and assessment/evaluation, A-47
  and Basic Programs, 11, 22-24
  definition of, A-4, A-15, A-108
  and local recipients' requirements, A-43
  as a major provision in the Act, A-4
  and negotiated rulemaking, A-4, A-101
  and the Postsecondary Vocational Education Program, A-34
  and the Secondary Vocational Education Program, A-34
  and State Leadership Activities, A-32
  and the State Vocational and Applied Technology Education Program, A-4
  and use of funds, A-101
  See also Integration of vocational/academic courses
Collection of amounts due, C-31
Collection of claims, D-12
Commitment, A-12
  See also specific program
Community-based organizations
  and Basic Programs, A-31
  and the Community Education Employment Centers Program, A-9, A-54, A-57
  and the Cooperative Demonstration Program, A-10, A-92-95
  definition of, A-15
  and the Demonstration Centers for the Training of Dislocated Workers, A-72
  and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-91
  and the Displaced Homemakers Program, A-32, A-33
  and the Educational Program for Federal Correctional Institutions, A-84
  and the Indian Vocational Education Program, A-20
  and local recipients' requirements, A-43
  and the National Tech-Prep Education Program, A-50
  and the Sex Equity Program, A-33
  and the Single Parent Program, A-32, A-33
  and the Single Pregnant Women Program, A-32, A-33
  as small entities, A-11
  as a Special Program, 11, 12
  and state-administered programs, 28, 29
  and State Leadership Activities, A-32
  and the State Vocational and Applied Technology Education Program, A-32
  and the Vocational Education Lighthouse Schools Program, A-57, A-58, A-59
  See also Vocational Education Support Programs by Community-Based Organizations
Community colleges
  definition of, A-51
  departments of, A-15
  as institutions of higher education, A-51
  state directors of, A-4
  and the Vocational Education Lighthouse Schools Program, A-58
  and the Vocational Education Research Program, A-62
  and the Vocational Educator Training Fellowship Program, A-78
  See also Tribally-controlled community colleges

- **Community Education Employment Centers Program, 11, 12, A-9, A-14, A-53-57, A-110**
- **Comparability requirements**
  - and Basic Programs, 21
  - and compensatory education, A-45
  - compliance with, A-46
  - and the disabled, A-45
  - and the educationally disadvantaged, A-45
  - and eligible recipients, A-108
  - and the ESEA, A-45
  - and limited English proficiency, A-45
  - and local educational agencies, 21, A-45, A-46
  - and local recipients' requirements, A-45
  - and phase-in programs, A-45
  - and regional meetings, A-108
  - and secondary schools, A-45
  - and state-administered programs, B-19
  - and the state plan, A-8, A-45
  - and state's responsibilities, A-108
  - and the State Vocational and Applied Technology Education Program, A-8, A-24, A-25, A-29, A-46
  - and unpredictable changes, A-45
  - and use of funds, A-108
  - written procedures for, A-45
- **Competency-based education, 22-23, A-18**
  - See also Coherent sequences of courses
- **Competitive bids, C-20-21, C-22**
- **Competitive grants, 28, A-52**
- **Complaints, and state-administered programs, B-26-27**
- **Compliance**
  - and allowable costs, 40
  - and audits, 8, 40, 49, C-15, E-4-5, E-6
  - and Basic Programs, 23
  - and discrimination, 14
  - and records, B-25
  - and reserving funds, A-41
  - and state-administered programs, B-23, B-25, B-27-28
  - and supplanting funds, 49
- **Comprehensive Career Guidance and Counseling Program, 11, 12, A-24, A-37, A-39**
- **Conflict of interest, C-19**
- **Consolidated grants, B-8-12**
- **Consortia**
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and distribution of funds, A-7
  - and the Educational Program for Federal Correctional Institutions, A-84-85
  - and the Indian Vocational Education Program, A-19
  - and local educational agencies, 12, A-7
  - and minimum grants, A-7
  - and the National Center or Centers for Research in Vocational Education, A-66-69
  - and the National Tech-Prep Education Program, 12, 29, A-48, A-49
  - and the Secondary Vocational Education Program, A-35-36
  - and the State-Administered Tech-Prep Education Program, 12, 29, A-9, A-50-51, A-52
  - and the State Vocational and Applied Technology Education Program, A-7
  - and the Supplementary State Grants Program, A-53
- **Construction, definition of, A-15**
- **Construction projects**
  - and budget changes, C-16
  - outlay reports for, C-28
  - procurement for, C-20
  - reimbursements for, C-31
  - selection criteria for, C-20
  - and state-administered programs, B-16, B-18, B-20
  - and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-9
- **Construction trades, definition of, A-88**
- **Consumer and Homemaking Education**
  - as a Special Program, 11, 12, 29, A-24, A-26, A-37, A-38-39, A-43
  - as a Cooperative Demonstration Program, A-10, A-92, A-93, A-94-95
  - See also Displaced Homemaker Program
- **Contract administration system, C-19**
- **Contractors, income earned by, C-12**
- **Contracts**
  - definition of, A-14, C-4
  - and procurement, C-24-25
  - provisions of, C-24-25
  - termination of, C-24
  - time and material, C-20
  - violations/breach of, C-24
- **Cooperative agreements, reporting requirements for, A-19**
- **Cooperative Demonstration Program, A-10, A-14, A-91-95, A-110**
- **Cooperative education, definition of, A-15**
- **Cooperative projects**
  - and area vocational education schools, 10
  - and Basic Programs, 10, 11
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and Leadership Activities, A-32
  - and local recipients' requirements, A-43
  - and the National Center or Centers for Research in Vocational Education, A-68, A-69
  - and the Paperwork Reduction Act [1980], A-12
  - and the Secondary Vocational Education Program, A-35-36
  - and state-administered programs, 27
  - and the state plan, A-30
  - and the Vocational Education Support Programs by Community-Based Organizations, A-38
  - See also Cooperative Demonstration Program
- **Copyrights, C-19, C-25**
- **Correctional educators' training, A-69**
- **Correctional institutions**
  - definition of, 55, A-15
  - as small entities, A-11
  - and the Vocational Education Research Program, A-62
  - See also Educational Programs for Federal Corrections Institutions
- **Corrections educational agencies**
  - and administrative costs, A-45
  - and Basic Programs, 29
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - definition of, A-17
  - designation of, A-24, A-33
  - as eligible recipients, A-16
  - and the State Council on Vocational Education, A-27
  - and the State Vocational and Applied Technology Education Program, A-30
  - and use of funds, A-30
  - and the Vocational Education Training and Study Grants Program, A-73, A-74
- **Cost adjustment, and after-the-grant requirements, C-31**
- **Cost allocation plans, 37, C-29**
- **Cost principles, B-16**
- **Costs**
  - of audits, 40, E-7
  - excess, 9, D-13
  - and flexibility, 35
  - of generating program income, C-14
  - guidelines concerning, 15, 18
  - and termination/suspension of awards, C-30
  - See also Allowable costs; Cost sharing/matching; Direct costs; Indirect costs
- **Cost sharing/matching**
  - and audits, 8, 40, 49-50, E-4
  - and Basic Programs, 12, A-24, A-42
  - and the Business and Education Standards Program, A-10, A-83
  - and changes in the 1988 and 1990 Acts, 9
  - and the Cooperative Demonstration Program, A-10, A-93, A-94, A-95
  - definition of, C-4
  - and the disadvantaged, 49
  - and employees of other organizations, C-13
  - and equipment, C-13
  - and facilities, C-13
  - as a general provision, 11
  - and hearings for the recovery of funds, D-14
  - and in-kind contributions, 49
  - and the Materials Development in Telecommunications Program, A-70
  - and program income, C-14
  - and property, C-13
  - and proportionality, 50
  - and records, C-12
  - and state-administered programs, B-11, B-12, B-16, B-25
  - and the state plan, A-42
  - and supplies, C-13
  - and the Uniform Administrative Act, C-4, C-11-14
  - and use of funds, B-25-26
  - and valuation of services, C-12-13
- **Cost-type contract, definition of, C-4**
- **Council of Advisors [Community Education Employment Centers Program], A-54, A-56**
- **Counseling**
  - See Career guidance and counseling
- **Counselor training**
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Materials Development in Telecommunications Program, A-69, A-70
  - and the National Tech-Prep Education Program, A-49
  - and the State-Administered Tech-Prep Education Program, A-51
  - and the State Vocational and Applied Technology Education Program, A-31
  - and tech-prep education, 29

Criminal offenders
- and Basic Programs, 11, 12
- common questions asked about programs for, 20-21
- and the Cooperative Demonstration Program, A-92
- definition of, A-15
- as displaced homemakers, A-16
- and the Model Centers of Regional Training for Skilled Trades, A-88
- and special populations, 9
- and state-administered programs, 28-29
- and the Vocational Education Training and Study Grants Program, A-74
- and the Vocational Educator Training Fellowship Program, A-78, A-79
- See also Educational Program for Federal Correctional Institutions; Programs for Criminal Offenders

Curriculum development
- and the Adult Vocational Education Program, A-34
- and Basic Programs, 11, 24
- and the Business-Labor-Education Partnership for Training Program, A-40
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Consumer and Homemaking Education Program, A-38, A-39
- and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-89-91
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64-66
- and the Postsecondary Vocational Education Program, A-34
- and the Secondary Vocational Education Program, A-34
- and state-administered programs, 27
- and State Leadership Activities, A-32
- and the state plan, A-28
- and the State Vocational and Applied Technology Education Program, A-31
- and the Supplementary State Grants Program, A-53
- and tech-prep education, 12, 29
- and the Vocational Education Lighthouse Schools Program, A-58
- See also Demonstration Programs for the Integration of Vocational and Academic Learning; National Network for Curriculum Coordination in Vocational and Technical Education

Curriculum materials
- definition of, A-15
- See also Materials

D

Data collection, 11, 27, 28, A-47

Day-care services, A-33, A-56, A-62, B-22

Demonstration Centers for the Training of Dislocated Workers, A-10, A-14, A-71-72, A-110

Demonstration projects
- and adequacy of resources, A-12
- and assessment/evaluation, A-11
- and the Bilingual Vocational Training Program, A-97
- and the Community Education Employment Centers Program, 12, A-54, A-55-56
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Consumer and Homemaking Education Program, A-38
- and National Programs, 11
- and the National Tech-Prep Education Program, 12, A-49
- and the Paperwork Reduction Act [1980], A-11-12
- and the State Board for Vocational Education, A-25
- and the Vocational Education Dropout Prevention Program, A-87
- and the Vocational Education Lighthouse Schools Program, 12, A-57, A-58, A-59
- See also Cooperative Demonstration Program; Demonstration Centers for the Training of Dislocated Workers; Demonstration Projects for the Integration of Vocational and Academic Learning; Model Centers of Regional Training for Skilled Trades

Demonstration Projects for the Integration of Vocational and Academic Learning, A-10, A-14, A-89-91, A-110

Department, definition of, A-14, A-15, D-3

Department of Education Organization Act [DEOA], B-7, B-16, B-24

Dependent, definition of, A-73, A-75

Development programs
- and Basic Programs, 11
- and state-administered programs, 27
- state's responsibilities for, A-28
- See also Inservice training; Preservice training; Staff development

Direct costs, 35-37

Direct grant programs, regulations applying to, A-14

Directors Council [National Network for Curriculum Coordination in Vocational and Technical Education], A-65

Disabled
- and Basic Programs, 10
- and the Business-Labor-Education Partnership for Training Program, A-40
- and community-based organizations, A-15
- and the Community Education Employment Centers Program, A-55
- and comparability requirements, A-45
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Consumer and Homemaking Education Program, A-38
- and the Cooperative Demonstration Program, A-92, A-93
- definition of, A-4, A-16
- and equitable participation, 23
- as a focus of the Act, A-3
- and local recipients' requirements, A-43, A-44
- and the Model Centers of Regional Training for Skilled Trades, A-88
- and the National Tech-Prep Education Program, A-49
- and the Secondary Vocational Education Program, A-34, A-35
- as a special population, 9
- and the State-Administered Tech-Prep Education Program, A-51
- and the State Council on Vocational Education, A-27
- and the State Vocational and Applied Technology Education Program, A-23, A-26, A-29
- and supplanting funds, 49
- and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-62
- and the Vocational Education Lighthouse Schools Program, A-58
- and the Vocational Education Research Program, A-62
- and the Vocational Education Support Programs by Community-Based Organizations, A-38
- and the Vocational Education Training and Study Grants Program, A-74
- and the Vocational Educator Training Fellowship Program, A-78, A-79
- See also Special populations, Supplementary services

Disadvantaged
- and the Cooperative Demonstration Program, A-92, A-93, A-95
- and cost sharing/matching, 49, F-3
- definition of, 55, A-15
- and the distribution of funds, A-7, F-4
- and equitable/full participation, A-48
- as a focus of the Act, A-3
- and the National Tech-Prep Education Program, A-49
- and the State-Administered Tech-Prep Education Program, A-51
- and the State Vocational and Applied Technology Education Program, A-8, A-29
- and the Vocational Education Lighthouse Schools Program, A-57, A-58
- and the Vocational Education Research Program, A-62
- See also Economically disadvantaged; Educationally disadvantaged

Disallowance decisions
- and after-the-grant requirements, C-31
- and audit costs, 7, 40
- definition of, D-3
- examples of, 33, 34
- and hearings for the recovery of funds, D-7-14
- as a sanction, 7, E-7

Disbarment, C-19, C-30

Discretionary programs, A-11, B-14
- See also specific program

Dislocated workers, A-93, A-9D See also Agriculture Action Centers; Demonstration Centers for the Training of Dislocated Workers; Displaced homemakers; Displaced Homemakers Program

Displaced homemakers, A-15-16, A-62, A-90

Displaced Homemakers Program
- allocations for the, 28, A-7
- as a Basic Program, 11, 12, A-31
- eligibility for the, A-24, A-32
- reserving funds for, A-40-42
- settings for the, A-24, A-33
- and sex discrimination/stereotyping, A-26
- and the state plan, A-28
- use of funds in the, A-24, A-28, A-32-33
- See also Consumer and Homemaking Education Program

- **Dissemination of information**
  - and the GEPA, 14
  - and the Paperwork Reduction Act [1980], A-11-12
  - and state-administered programs, 27, B-26
  - and the Vocational Education Dropout Prevention Program, A-86, A-87
  - and the Vocational Education Lighthouse Schools Program, A-58, A-59
  - and the Vocational Education Research Program, A-62, A-63, A-64
  - See also specific program
- **Distribution of funds**
  - and adult education, A-28
  - and consortia, A-7
  - and the disadvantaged, A-7-8, F-4
  - and funding formulas, A-7-8
  - and intermediate educational agencies, A-7
  - and local education agencies, A-7
  - and minimum grants, A-7
  - and postsecondary education, A-28
  - and secondary education, A-28
  - and sex discrimination/stereotyping, A-26
  - and state-administered programs, B-5, B-6
  - and the State Council on Vocational Education, A-27
  - and the state plan, A-28, A-30
  - and waivers, A-7
  - See also Funding formulas; specific program
- **Dropouts, A-15, A-38, A-49, A-5**
  - See also Vocational Education Dropout Prevention Program

E

- **Economically disadvantaged**
  - and the Adult Vocational Education Program, A-37
  - and area vocational education schools, 10
  - and assessment/evaluation, A-47
  - and Basic Programs, 10
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - and the Community Education Employment Centers Program, A-9, A-54
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - definition of, 55, A-4, A-15, A-16
  - determination of, A-30, A-36
  - and local recipients' requirements, A-43, A-44
  - and the Model Centers of Regional Training for Skilled Trades, A-88
  - and the Postsecondary Vocational Education Program, A-37
  - and the Secondary Vocational Education Program, A-24, A-35, A-37
  - as a special population, 9
  - and the State Vocational and Applied Technology Education Program, A-26
  - and the Supplementary State Grants Program, A-53
  - and the Vocational Education Dropout Prevention Program, A-86
  - and the Vocational Education Support Programs by Community-Based Organizations, A-38
  - and the Vocational Education Training and Study Grants Program, A-74
  - and the Vocational Educator Training Fellowship Program, A-78, A-79
  - See also Disadvantaged
- **Economic development programs, 24, A-63**
- **Educationally disadvantaged**
  - and the Community Education Employment Centers Program, A-54
  - and comparability requirements, A-45
  - as part of the definition for disadvantaged, A-15
  - as a specia[illegible]ulation, 9
  - and the State Vocational and Applied Technology Education Program, A-47
  - and the Supplementary State Grants Program, A-53
  - and the Vocational Education Support Programs by Community-Based Organizations, A-38
- **Educational Program for Federal Correctional Institutions, A-10, A-14, A-84, A-110**
- **Educational significance, A-11**
  - See also specific program
- **Education Amendments [1972], 14**
- **Education Amendments [1974], B-7**
- **Education Appeal Board, 49, B-27**
- **Education Department General Administrative Regulations [EDGAR], 14, 17, 31, 32, A-14**
- **Education for Economic Security Act, B-7**
- **Education of the Handicapped Act, 49, B-6, B-7**
- **Electronic funds transfer, C-28**
- **Elementary school, definition of, A-14**
- **Elementary and Secondary Education Act [1965]**
  - and the Chapter 1 definition, A-15
  - and the Community Education Employment Centers Program, A-54
  - and comparability requirements, A-45
  - and Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and the disadvantaged definition, A-16
  - and the Secondary Vocational Education Program, A-34, A-35
  - and Special Programs, 12
  - and state-administered programs, B-26
  - and the state plan, B-6, B-7
  - and the State Vocational and Applied Technology Education Program, A-5, A-23, A-26
  - and the Supplementary State Grants Program, A-53
  - and the Uniform Administrative Act, C-6
- **Eligibility, A-11**
  - See also specific program
- **Eligible applicants, and state-administered programs, B-26**
- **Eligible institution, definition of, A-36**
- **Eligible recipients**
  - and audits, 8, 40, E-4
  - and Basic Programs, 10
  - and comparability requirements, A-108
  - definition of, 55, A-16
  - and special populations, A-109
  - and the state plan, A-28
  - and use of funds, A-109
- **Emergency rules/regulations, A-18-19**
- **Employees of other organizations, C-13**
- **Employer-related nonprofit organizations, A-15**
- **Employers, 24, A-32, A-58**
- **Enforcement**
  - and the Uniform Administrative Act, C-30
  - See also General Education Provisions Act
- **Entitlement programs, A-6, B-14**
- **Equipment**
  - and adult education, 24
  - and the Adult Vocational Education Program, A-34, A-45
  - and area vocational education schools, 25
  - and audits, 25
  - and Basic Programs, 24-25
  - and the Bilingual Vocational Training Program, A-97
  - and the Business and Education Standards Program, A-82, A-83
  - and the Business-Labor-Education Partnership for Training Program, 12, A-29, A-40
  - and the Community Education Employment Centers Program, A-56
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Consumer and Homemaking Education Program, A-38
  - and the Cooperative Demonstration Program, A-94, A-95
  - and costs, 35
  - and cost sharing/matching, C-13
  - definition of, A-14, C-4
  - and the Demonstration Centers for the Training of Dislocated Workers, A-72
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-91
  - and the Educational Program for Federal Correctional Institutions, A-85
  - federally owned, C-18
  - flexibility about, 29
  - and full participation, 24
  - inventory of, 25, C-17-18
  - loaned, C-13
  - and local recipients' requirements, A-45-46
  - maintenance of, 25, C-18
  - management of, 25, C-17-18
  - and the Model Centers of Regional Training for Skilled Trades, A-89
  - and the National Tech-Prep Education Program, A-50
  - non-Basic Program, 25
  - and postsecondary educational institutions, 24, 25
  - and the Postsecondary Vocational Education Program, A-34, A-45
  - and program income, C-17
  - and Programs for Criminal Offenders, A-33
  - records about, 25, C-17, C-29
  - replacement of, C-17
  - sale/disposition of, 25, C-14, C-18
  - and secondary schools, 24, 25
  - and the Secondary Vocational Education Program, A-34, A-45
  - sharing of, 25
  - and special populations, 24
  - and Special Programs, 12
  - and state-administered programs, B-16, B-20, C-17
  - and the State-Administered Tech-Prep Education Program, 29, A-51
  - and the State Vocational and Applied Technology Education Program, A-25, A-28

  - and the Supplementary State Grants Program, A-9, A-52, A-53
  - title to, B-20, C-17
  - and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-60, A-61, A-62
  - and the Uniform Administrative Act, C-4, C-14, C-17, C-29
  - use of, 24, C-17
  - and the Vocational Education Leadership Development Awards Program, A-75
  - and the Vocational Education Lighthouse Schools Program, A-59
  - and the Vocational Education Research Program, A-64
  - See also specific program

- **Equitable distribution, 47-48**
- **Equitable offset, 50-51, 55-56, F-3**
- **Equitable participation**
  - and the Adult Vocational Education Program, A-34
  - and Basic Programs, 11, 22-24
  - characteristics of, 23
  - and disabled, 23
  - and IDEA, 23
  - and negotiated rulemaking, A-100
  - and the Postsecondary Vocational Education Program, A-34
  - and the regional meetings, A-107
  - and the Secondary Vocational Education Program, A-34
  - and special populations, A-8, A-100-101, A-107
  - and state-administered programs, B-18
  - and the State Vocational and Applied Technology Education Program, A-8, A-48
  - and use of funds, A-100-101, A-107
- **Equity issues/programs, 10, 12, 28, A-67, A-88, A-92**
  - See also specific program
- **Evaluation**
  - See Assessment/evaluation; Program improvement; Program improvement plans; specific program
- **Exceptional or uncontrollable circumstances, definition of, A-42**
- **Excess costs, 9, D-13, F-3-4**
- **Executive Order 12291, A-11**
- **Executive Order 12372, A-12, C-8**
- **Executive Order 12549, C-5**
- **Expenditure report, definition of, C-4**
- **Expenditures, definition of, C-5**

F

- **Facilities**
  - and allowable costs, 34
  - and the Bilingual Vocational Instructor Training Program, A-99
  - and the Bilingual Vocational Training Program, A-97
  - and the Community Education Employment Centers Program, A-56
  - and the Cooperative Demonstration Program, A-94, A-95
  - and cost sharing/matching, C-13
  - definition of, 56, A-14, A-17
  - and the Demonstration Centers for the Training of Dislocated Workers, A-72
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-91
  - and health/safety standards, B-22
  - and the National Tech-Prep Education Program, A-50
  - rehabilitation, A-15
  - and Special Programs, 12
  - and state-administered programs, B-16, B-22, B-28
  - and the Supplementary State Grants Program, A-52, A-53
  - and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-61
  - and the Vocational Education Leadership Development Awards Program, A-75
  - and the Vocational Education Lighthouse Schools Program, A-59
  - and the Vocational Education Research Program, A-64
- **Fair Labor Standards Act, A-20**
- **Family Educational Rights and Privacy Act [1974], 14, B-25**
- **Federal Acquisition Regulation [FAR], A-14**
- **Federal agency, definition of, E-3**
- **Federal Cash Transactions Report, C-27**
- **Federal Claims Collection Standards, D-9**
- **Federal financial assistance, definition of, 39, E-3**
- **Federal Freedom of Information Act, C-29**
- **Federally recognized Indian tribal government, definition of, A-14, C-4**
- **Federal Mediation and Conciliation Service, A-4, A-100**
- **Fellow, definition of, A-78**
- **Fellowships, A-78, A-98. See also Vocational Educator Training Fellowships Program**
- **Financial management systems, C-9-10**
- **Financial Status Report, C-27, C-31**
- **Firefighting, definition of, A-88**
- **Fiscal requirements**
  - and administrative costs, A-8-9
  - and changes in the 1988 and 1990 Acts, 9
  - and General Education Provisions Act, 13, 14
  - and "necessary and reasonable" cost, A-9
  - and reporting requirements, B-24-25
  - and state-administered programs, B-11, B-12, B-14, B-22, B-23-25
  - and the state plan, A-8
  - and technical assistance, A-8, A-9
  - and the Uniform Administrative Act, C-9
  - See also Carryover funds; Obligating funds; specific program
- **Fiscal year, definition of, A-14**
- **Flexibility**
  - and accountability, A-3
  - and Basic Programs, 24
  - and consolidated grants, B-9-10
  - and costs, 35
  - about equipment, 29
  - and the negotiated rulemaking process, A-4
  - and Regulator Flexibility Act Certification, A-11
  - and the State Vocational and Applied Technology Education Program, A-8
  - and use of funds, A-8
- **Food Stamp Act [1977], A-16, A-36**
- **Formula awards**
  - and Basic Programs, 10
  - and state-administered programs, 28, B-5, B-14
  - and the State-Administered Tech-Prep Education Program, A-51, A-52
- **Formulas, and audits, 48**
- **For-profit agencies/organizations, A-96, A-98, C-15**
- **Full participation**
  - and the Adult Vocational Education Program, A-34
  - and Basic Programs, 10, 11, 19, 20
  - common questions asked about, 20-21
  - definition of, 20
  - and equipment, 24
  - and negotiated rulemaking, A-100
  - and the Postsecondary Vocational Education Program, A-34
  - and the regional meetings, A-107
  - and the Secondary Vocational Education Program, A-34
  - and special populations, A-100, A-107
  - and the State Vocational and Applied Technology Education Program, A-8, A-48
  - and use of funds, A-8, A-100, A-107
- **Full-time course of study, definition of, A-75**
- **Funding**
  - applications for additional, C-8
  - changes in period of availability of, C-16
  - and period of availability of funds, C-11
  - See also Distribution of funds; Funding formulas; "Hold-harmless" provision; Supplanting funds; Use of funds
- **Funding formulas, A-7-8, A-9, A-37**

G

- **General Education Provisions Act, 13, A-30**
  - and the Administrative Law Judges, D-3-7
  - and allocations/reallocations of funds, 14
  - amendments to the, 13, 49
  - and appeals, 15
  - and audits, 14, 15
  - as a basic regulatory guideline, 13-14, 15, 16, 18
  - and a compromise of claims, D-9-10
  - definitions for the, D-3
  - and dissemination of information, 14
  - and Enforcement Regulations, 15, 18
  - and fiscal requirements, 13, 14
  - general provisions of the, 16, 18, D-3-7
  - and hearings for recovery of funds, D-4, D-7-14
  - and local recipients, 13, 14
  - overview of the, 13-14
  - purpose of the, 13, D-3
  - and reporting requirements, 13
  - and state-administered programs, B-5, B-6, B-7, B-13, B-16, B-24, B-25, B-27
  - and state plans, A-30, B-7
  - and the statute of limitations, 49, F-4
  - and technical assistance, 14
  - and the Tydings Amendment, 13, 49, F-4
  - and the Uniform Administrative Act, C-29

- **Generally accepted, definition of, E-3**
- **Generally accepted government auditing standards, 39**
  - definition of, E-3
- **General occupational skills, definition of, A-16**
- **General revenue sharing, C-12**
- **Gifted students**
  - definition of, A-81
  - See also Internships for Gifted and Talented Vocational Education Students Program
- **Government, definition of, C-4**
- **Government revenues, and program income, C-14**
- **Grantee, definition of, A-14, C-4**
- **Grant period, definition of, A-14**
- **Grants, definition of, A-14, C-4**

H

- **Handicapped**
  - See Disabled
- **Hearings**
  - about applications, B-14-16
  - cease and desist, B-27, D-4
  - and the Indian Vocational Education Program, 21-22
  - and the OALJ, 14, 15, 18, 45-46, D-3-7
  - and posthearing procedures, B-22
  - for recovery of funds, D-4, D-7-12
  - about the state plan, A-30, A-31, B-13
  - about the State Vocational and Applied Technology Education Program, A-5
  - and state-administered programs, B-13, B-14-16, B-21-22, B-27
  - by state agencies, B-14-16, B-27
  - and subgrantees, B-14-16
  - withholding, B-27, D-4
  - See also Appeals
- **Higher Education Act [1965], A-16, A-37, A-52, A-62, B-7, D-3**
- **High technology, definition of, A-16**
- **"Hold-harmless" provision, A-7, A-41-42, D-14**

I

- **Immigrant Education Program, B-7**
- **Imputed expenses, 51**
- **Income**
  - earned by contractors, C-12
  - See also Program income
- **Independent auditor, 7, 39, C-15, E-3**
- **Indians**
  - definition of, A-20, A-60
  - and limited English proficiency- A-16-17
  - See also Indian Vocational Education Program; Tribally-Controlled Postsecondary Vocational Institutions Program
- **Indian Self-Determination and Education Assistance Act, A-17, A-19, A-20, A-21, A-22, A-62, C-11**
- **Indian student count, definition of, A-60**
- **Indian tribal governments, C-3, C-4, C-25**
- **Indian tribe, definition of, A-20, A-60, E-3**
- **Indian Vocational Education Program, A-5, A-14, A-19, A-20-22, A-110-11**
- **Indirect costs, 7, 35-37, B-17, C-29**
- **Individualized education programs, 10, 49, A-6, A-8, A-16, A-29, A-34, A-35, A-45, A-46**
- **Individuals with Disabilities Education Act [IDEA]**
  - and the definition of individual with disabilities, A-16
  - and equitable participation, 23
  - and information services, A-5, A-6
  - and local recipients' requirements, A-44
  - and review of local applications, A-5
  - and the Secondary Vocational Education Program, A-34, A-35
  - and standards/performance measures, A-46
  - and the State Vocational and Applied Technology Education Program, A-19, A-26, A-29, A-30
  - and supplanting funds, A-45
  - See also Individualized education programs
- **Industrial trade associations, A-82**
- **Ineligible beneficiaries, D-12-13**
- **Information services**
  - and Basic Programs, 23
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Displaced Homemakers Program, A-33
  - and local recipients' requirements, A-44
  - and the National Network for Curriculum Coordination in Vocational and Technical Education, A-66
  - and sex discrimination/stereotyping, A-26
  - and the Single Parent Program, A-33
  - and the Single Pregnant Women Program, A-33
  - and special populations, A-6
  - and the Vocational Education Lighthouse Schools Program, A-57-58
- **In-kind contributions, 49, C-6, C-12**
- **Inservice training**
  - and the Adult Vocational Education Program, A-34
  - and the Bilingual Vocational Instructor Training Program, A-11, A-98-100
  - and the Community Education Employment Centers Program, A-55, A-57
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and the National Network for Curriculum Coordination in Vocational and Technical Education, A-65, A-66
  - and the National Tech-Prep Education Program, 29, A-49
  - and the Postsecondary Vocational Education Program, A-34
  - and the Secondary Vocational Education Program, A-34
  - and the State-Administered Tech-Prep Education Program, 29, A-51
  - and State Leadership Activities, A-32
  - and the Vocational Education Dropout Prevention Program, A-86
  - and the Vocational Education Lighthouse Schools Program, A-58
- **Institutions of higher education**
  - and the Adult Vocational Education Program, A-34
  - and audits, 40, C-15, E-4
  - and Basic Programs, 24
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - and the Cooperative Demonstration Program, A-92, A-95
  - definition of, A-16, A-36, A-51, A-67
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - as eligible institutions, A-36
  - grant forms for, C-7
  - and the National Center or Centers for Research in Vocational Education, A-66-69
  - and the Postsecondary Vocational Education Program, A-34
  - and the Secondary Vocational Education Program, A-34
  - and the State-Administered Tech-Prep Education Program, A-52
  - and the Uniform Administrative Act, C-7
  - and the Vocational Education Dropout Prevention Program, A-85-87
  - and the Vocational Education Leadership Development Awards Program, A-75
  - and the Vocational Education Lighthouse Schools Program, A-58
  - and the Vocational Education Training and Study Grants Program, A-73
  - and the Vocational Educator Training Fellowship Program, A-78
- **Instructional activities, 27, A-38, A-39**
- **Insular areas, B-8-12**
- **Insurance, 34**
- **Integration of vocational/academic courses**
  - and the Adult Vocational Education Program, A-34
  - and assessment/evaluation, A-47
  - and Basic Programs, 11, 22-24
  - and the Consumer and Homemaking Education Program, A-95
  - and the Cooperative Demonstration Program, A-95
  - and the Indian Vocational Education Program, A-21
  - and local recipients' requirements, A-43
  - as a major provision in the Act, A-4
  - and the National Center or Centers for Research in Vocational Education, A-66
  - and national goals, A-3
  - and the National Tech-Prep Education Program, A-49
  - and negotiated rulemaking, A-101
  - and the Postsecondary Vocational Education Program, A-34
  - and the Secondary Vocational Education Program, A-34
  - and State Leadership Activities, A-32
  - and the State Vocational and Applied Technology Education Program, A-8
  - and use of funds, A-8, A-101
  - and the Vocational Education Dropout Prevention Program, A-86
  - and the Vocational Education Lighthouse Schools Program, A-58
  - and the Vocational Education Research Program, A-63
  - See also Demonstration Projects for the Integration of Vocational and Academic Learning

Interest [cost], 34

Intergovernmental agreements, concerning procurement, C-20

Intergovernmental reviews, A-12, A-14, C-5

Intermediate educational agencies
- definition of, A-16
- and distribution of funds, A-7
- as eligible recipients, A-16
- and negotiated rulemaking, A-102
- and regional meetings, A-109
- and the Secondary Vocational Education Program, A-24, A-33, A-35-36
- and sex discrimination/stereotyping, A-26
- as small entities, A-11
- and special populations, A-6, A-102
- and the State-Administered Tech-Prep Education Program, A-52
- and the State Vocational and Applied Technology Education Program, A-6, A-7, A-30
- and use of funds, A-102, A-109

Internal controls, 8, 40, C-9, E-3, E-4-5, E-6

Internships
- and the Business-Labor-Education Partnership for Training Program, 12, A-29
- and community-based organizations, A-15
- and the Vocational Education Support Programs by Community-Based Organizations, A-38
- and the Vocational Education Training and Study Grants Program, A-73-74
- See also Internships for Gifted and Talented Vocational Education Students Program

Internships for Gifted and Talented Vocational Education Students Program, A-10, A-11, A-14, A-80-82, A-112

J

Job Opportunities and Basic Skills [JOBS], A-20-21, A-23, A-96, A-103

Job Training Coordinating Council, A-5, A-28, A-30, A-31, A-47

Job Training Partnership Act [JTPA]
- and the Adult Vocational Education Program, A-37
- and the Bilingual Vocational Training Program, A-96-97
- and the Business-Labor-Education Partnership for Training Program, A-40
- and the Community Education Employment Centers Program, A-57
- and the Cooperative Demonstration Program, A-93
- and the Demonstration Centers for the Training of Dislocated Workers, A-71
- and the Indian Vocational Education Program, A-20-21
- and the job training coordinating council, A-30
- and joint funding of programs, A-18
- and local recipients' requirements, A-43
- and the Native Hawaiian Vocational Education Program, A-23
- and the occupational information coordinating committee, A-47
- and the Postsecondary Vocational Education Program, A-37
- and standards/performance measures, A-46, A-103
- and the State Board for Vocational Education, A-25
- and the State Council on Vocational Education, A-27
- and the State Vocational and Applied Technology Education Program, A-5, A-28, A-30
- and the Uniform Administrative Act, C-6

Job training system, and vocational education system, A-27

Johnson-O'Malley Act, A-20

Joint funding, 11, 37, A-18, B-14

K

Key personnel, A-11, C-16.
- See also specific program

L

Labor organizations
- and the Adult Vocational Education Program, A-34
- and Basic Programs, 24
- and the Business and Education Standards Program, A-82
- and the Business-Labor-Education Partnership for Training Program, A-40
- and the Postsecondary Vocational Education Program, A-34
- and the Secondary Vocational Education Program, A-34
- and the State Vocational and Applied Technology Education Program, A-32
- and the Vocational Education Lighthouse Schools Program, A-58

Leadership activities
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Consumer and Homemaking Education Program, A-38, A-39
- and the National Center or Centers for Research in Vocational Education, A-67
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64-66
- and regional meetings, A-105-6
- and tech-prep education, 29
- and time distribution, 27-28
- See also State Leadership Activities; Vocational Education Leadership Development Award Program

Least restrictive environment, 23, A-29

Lending libraries, A-66

Letters of credit, C-28

Library Services and Construction Act, B-7

Limited English proficiency
- and Alaska Natives, A-16-17
- and the Business-Labor-Education Partnership for Training Program, A-40
- and comparability requirements, A-45
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Cooperative Demonstration Program, A-92
- definition of, A-16-17
- and identification of people, A-27
- and local recipients' requirements, A-43, A-44
- and the National Tech-Prep Education Program, A-49
- and special populations, 9, A-17
- and the State-Administered Tech-Prep Education Program, A-51
- and the State Vocational and Applied Technology Education Program, A-24, A-26-27, A-29
- and the Vocational Education Lighthouse Schools Program, A-58
- and the Vocational Education Research Program, A-62, A-63
- and the Vocational Education Support Programs by Community-Based Organizations, A-38
- and the Vocational Education Training and Study Grants Program, A-74
- and the Vocational Educator Training Fellowship Program, A-78, A-79
- See also Bilingual Vocational Instructor Training Program; Bilingual Vocational Training Program

Limited Spanish proficiency, A-96

Liquidation of obligations, C-11

Loaned buildings/equipment/land, C-13

Local application, definition of, 56

Local educational agencies
- and the Adult Vocational Education Program, A-33, A-34
- and appeals, 10
- and Basic Programs, 10, 21, 23
- and the Bilingual Vocational Training Program, A-96
- and the Business-Labor-Education Partnership for Training Program, A-40
- and the Community Education Employment Centers Program, A-54-55, A-57
- and comparability requirements, 21, A-8, A-45, A-46
- and consortia, 12, A-7
- and the Cooperative Demonstration Program, A-92
- definition of, 56, A-5, A-17, B-17
- and the Demonstration Centers for the Training of Dislocated Workers, A-72
- and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90, A-91
- and distribution of funds, A-6, A-7
- as eligible recipients, A-16, A-36
- and equitable/full participation, A-48
- and hearings for the recovery of funds, D-8
- and indirect costs, B-17
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64
- and the National Tech-Prep Education Program, 12, A-50
- and negotiated rulemaking, A-100, A-102
- and the Postsecondary Vocational Education Program, A-33, A-34
- and the Secondary Vocational Education Program, A-33, A-34-35, A-36
- and sex discrimination/stereotyping, A-26
- as small entities, A-11
- and special populations, A-6, A-48, A-100, A-102
- and Special Programs, 12
- and state-administered programs, B-6, B-13, B-14, B-17, B-28
- and the State-Administered Tech-Prep Education Program, 12, A-52
- and the state Committee of Practitioners, A-5
- and the state plan, A-30

  - and the State Vocational and Applied Technology Education Program, A-6, A-7, A-8, A-30, A-46
  - and the Supplementary State Grants Program, A-9, A-52, A-53
  - and the Uniform Administrative Act, C-7
  - urban/rural, A-30
  - and use of funds, A-8, A-102
  - and the Vocational Education Dropout Prevention Program, A-85-87
  - and the Vocational Education Lighthouse Schools Program, A-59
- **Local governments, C-4-5, C-15, E-3**
- **Local program improvement plans**
  - See Program improvement plans
- **Local recipients**
  - and administrative costs, A-45
  - and the Adult Vocational Education Program, A-43
  - and assessment/evaluation, A-43, A-44
  - and career guidance and counseling, A-43, A-44
  - and a coherent sequences of courses, A-43
  - and community-based organizations, A-43
  - and comparability requirements, A-45
  - and coordination efforts, A-43
  - and the disabled, A-43, A-44
  - and the economically disadvantaged, A-43, A-44
  - and equipment, A-45-46
  - and the General Education Provisions Act, 13, 14
  - and the IDEA, A-44
  - and information services, A-44
  - and the integration of vocational/academic courses, A-43
  - and the JTPA, A-43
  - and limited English proficiency, A-43, A-44
  - and outreach efforts, A-43
  - and the Postsecondary Vocational Education Program, local recipients' requirements in the, A-43
  - and private industry councils, A-43
  - and program improvement, A-44
  - reporting requirements for, A-44-45
  - requirements for receiving a subgrant/contract by, A-43-44
  - responsibilities of, A-45
  - and the Secondary Vocational Education Program, A-43
  - and the Sex Equity Program, A-43
  - and special populations, A-43, A-44-45
  - and standards/performance measures, A-44
  - and the State Board for Vocational Education, A-43
  - and State Leadership Activities, 27-28
  - and supplanting funds, A-45
  - and supplementary services, A-44
  - and supportive services, A-43
  - and time distribution, 27-28
  - and use of funds, A-43, A-45
- **Long-term projects, A-12**

M

- **Maintenance-of-effort-requirement, 7, 8, 11, 12, 40, 47-48, 50, A-24, A-42-43, B-16, D-13, E-4**
- **Major federal assistance program, definition of, E-3, E-7**
- **Matching**
  - definition of, 56
  - See also Cost sharing/matching
- **Materials**
  - and the Bilingual Vocational Instructor Training Program, A-99
  - and the Bilingual Vocational Training Program, A-97
  - and the Business-Labor-Education Partnership for Training Program, A-40
  - and the Community Education Employment Centers Program, A-56, A-57
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Consumer and Homemaking Education Program, A-38
  - and the Cooperative Demonstration Program, A-94
  - and costs, 35
  - and the Demonstration Centers for the Training of Dislocated Workers, A-72
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-91
  - and the National Center or Centers for Research in Vocational Education, A-67
  - and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64, A-65, A-66
  - and the National Tech-Prep Education Program, A-49
  - and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-62
  - and the Vocational Education Dropout Prevention Program, A-87
  - and the Vocational Education Lighthouse Schools Program, A-57, A-59
  - and the Vocational Education Research Program, A-64
- **Materials Development in Telecommunications Program, A-10, A-14, A-69-71**
- **Measure, definition of, A-17**
- **Mediation, 45, D-6**
- **Mentoring, 24, A-34, A-56, A-86**
- **Minimum grants**
  - and the Adult Vocational Education Program, A-7, A-36
  - and the distribution of funds, A-7
  - in the Indian Vocational Education Program, A-20
  - and the Postsecondary Vocational Education Program, A-7, A-36
  - and the Secondary Vocational Education Program, A-7, A-35
  - and the State Vocational and Applied Technology Education Program, A-7
  - and waivers, A-7
- **Minorities**
  - and the Business-Labor-Education partnership for Training Program, A-40
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Model Centers of Regional Training for Skilled Trades, A-88
  - and the National Center or Centers for Research in Vocational Education, A-67
  - and the National Tech-Prep Education Program, A-49
  - and state-administered programs, 27
  - and the State-Administered Tech-Prep Education Program, A-51
  - and the Vocational Education Lighthouse Schools Program, A-57, A-58
  - and the Vocational Education Training and Study Grants Program, A-74
  - and the Vocational Educator Training Fellowship Program, A-78, A-79
- **Minority businesses, 41, C-11, C-22-23, E-7**
- **Mitigating circumstances, D-7, D-8-9, D-11**
- **Model Centers of Regional Training for Skilled Trades, A-10, A-14, A-87-89, A-110**
- **Model programs- See Demonstration projects**

N

- **National Apprenticeship Act, A-14-15, A-39**
- **National associations, A-4**
- **National Center or Centers for Research in Vocational Education**
  - activities funded by the, 11, A-10, A-66-67, A-69
  - and administrative issues, A-67, A-68
  - and assessment/evaluation, A-67
  - and budget/cost effectiveness, A-68
  - and conditions after making awards, A-68-69
  - definitions applying to the, A-67
  - and designation of a National Center/Centers, A-67
  - directorships of, A-69
  - and dissemination of information, A-66-69
  - eligibility for the, A-10, A-66
  - final year activities of the, A-69
  - and Internships for Gifted and Talented Vocational Education Students Program, A-80, A-81
  - making awards for the, A-67-68
  - and the National Network for Curriculum Coordination in Vocational and Technical Education, A-66
  - overview of the, A-66
  - panels for the, A-10
  - priorities for the, A-67
  - purpose of the, A-9-10, A-66
  - regulations applying to the, A-14, A-67
  - reporting requirements for the, A-111
  - selection criteria for the, A-10, A-68
  - state's responsibilities for, A-25, A-47
  - substantive studies of the, A-69
  - and use of funds, A-68
  - and the Vocational Education Training and Study Grants Program, A-73, A-74
  - National Centers for Research in Vocational Education, and the State Vocational and Applied Technology Education Program, A-25
- **National Council of La Raza, A-15**
- **National Defense Education Act, B-6**
- **National Diffusion Network, A-66, A-90**
- **National Dropout Prevention Center, A-86**
- **National Network for Curriculum Coordination in Vocational and Technical Education, A-9, A-14, A-64-66, A-110, A-111**
- **National Occupational Competency Testing Institute, A-79**
- **National Occupational Information Coordinating Committee, A-25, A-46, A-47**

- **National Programs, overview of, 11, 12**
- **National Puerto Rican Forum, A-15**
- **National School Lunch Act, A-4, A-16, A-36, C-6**
- **National Tech-Prep Education Program, 11, 12, A-9, A-14, A-40, A-48-50, A-110**
- **National Urban Indian Council, A-15**
- **National Urban League, A-15**
- **Native Alaskan groups, A-15**
- **Native Hawaiian, definition of, A-22**
- **Native Hawaiian Vocational Education Program, A-5, A-14, A-22, A-110**
- **Navajo Community College Act, A-18**
- **"Necessary and reasonable" cost, A-9**
- **Need, definition of, A-11**
- **Negotiated rulemaking**
  - and assessment/evaluation, A-4, A-7, A-101
  - authorization for a, A-3
  - and a coherent sequence of courses, A-4, A-101
  - and equitable/full participation, A-100-101
  - and flexibility, A-4
  - and the integration of vocational/academic courses, A-101
  - and intermediate educational agencies, A-102
  - issues for, A-4, A-100
  - and local educational agencies, A-100, A-102
  - representation in, A-4, A-100
  - selection of negotiators for the, A-4
  - and services, A-101-2
  - and special populations, A-4, A-6, A-100-101
  - and standards/performance measures, A-100, A-101
  - summary of results of, A-100-102
  - and supplementary services, A-100
  - and use of funds, A-8, A-100-101
- **New technology, A-38**
- **Noncompliance**
  - remedies for, C-30
  - and use of funds, C-30
- **Non-discrimination, 14, 17, B-16**
- **Non-profit institutions/organizations**
  - and the Adult Vocational Education Program, A-33
  - and audits, C-15
  - and the Bilingual Vocational Instructor Training Program, A-98
  - and the Bilingual Vocational Training Program, A-96
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - as institutions of higher education, A-36
  - and the Postsecondary Vocational Education Program, A-33
  - regulations applying to, A-14
  - and the State-Administered Tech-Prep Education Program, A-52
  - and the Vocational Education Dropout Prevention Program, A-85-87
- **Non-supplanting**
  - definition of, 56
  - See also Supplanting funds
- **Notice of Proposed Rulemaking [U.S. Dept. of Education], 14, 16**

O

- **Obligating funds, 49, B-23-24, F-4-5**
- **Obligations, definition of, C-5**
- **Office of Management and Budget [OMB], C-5, C-7-8**
- **Offset expenses, 50-51**
- **Outlay Report, C-28, C-31**
- **Outlays, definition of, C-5**
- **Outreach projects, A-38, A-39, A-40, A-43**

P

- **Pacific Regional Educational Laboratory, A-31**
- **Paperwork Reduction Act [1980], A-11-12, C-7, C-8, C-27**
- **Parent/community coordinator [Community Education Employment Centers Program], A-56**
- **Parents**
  - career guidance and counseling for, A-56
  - and the Community Education Employment Centers Program, A-9, A-56
  - definition of, A-54
  - and the Vocational Education Dropout Prevention Program, A-86
- **Partnerships for Educational Improvement, B-15**
- **Partnerships. See Cooperative projects**
- **Payment bonds, C-24**
- **Payments**
  - final request for, C-31
  - and program income, C-10
  - suspension of, 7, E-7
  - and the Uniform Administrative Act, C-10-11
  - withholding, 7, 40, C-10, C-30, E-7
- **Pell Grant recipients, 10, A-7, A-36, A-37**
- **Percentage of completion method, definition of, C-5**
- **Performance bonds, C-24**
- **Personnel expenses, 32, 34**
- **Phase-in programs, A-45**
- **Plan of operation, A-11**
  - See also specific program
- **Postsecondary educational institutions**
  - and the Bilingual Vocational Training Program, A-96
  - and the Bureau of Indian Affairs, A-17
  - and the Comprehensive Career Guidance and Counseling Program, A-39
  - and the Cooperative Demonstration Program, A-92
  - definition of, 56, A-17
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and the Displaced Homemakers Program, A-33
  - as eligible recipients, A-16
  - and equipment, 24, 25
  - and Internships for Gifted and Talented Vocational Education Students Program, A-80-82
  - and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64
  - and Pell grant recipients, 10
  - regulations applying to, A-14
  - and sex discrimination/stereotyping, A-26
  - and the Sex Equity Program, A-33
  - and the Single Parent Program, A-33
  - and the Single Pregnant Women Program, A-33
  - as small entities, A-11
  - and special populations, A-100
  - and standards/performance measures, A-104
  - and the State-Administered Tech-Prep Education Program, 12, A-51
  - and the state plan, A-28
  - and the Vocational Education Research Program, A-63
  - See also Articulation; Private postsecondary educational institutions; Postsecondary Vocational Education Program
- **Postsecondary Vocational Education Program**
  - and administrative issues, A-8
  - and amount of grants, A-36
  - and assessment/evaluation, A-3, A-6
  - as a Basic Program, 10, 23, A-31
  - definitions applying to the, A-24, A-36-37
  - distribution/redistribution of funds in the, A-7-8, A-24, A-28, A-30, A-36, A-37
  - eligibility for the, A-33
  - and fiscal requirements, A-8, A-37
  - and the JTPA, A-37
  - local recipients' responsibilities for the, A-43
  - and minimum grant amounts, A-7, A-36
  - and Pell Grant recipients, A-36, A-37
  - priorities in the, A-34
  - reserving funds for the, A-36, A-41
  - and the State Council on Vocational Education, A-27
  - and the state plan, A-28, A-34
  - use of funds in the, A-24, A-33-34, A-43
  - waivers in the, A-8, A-24, A-37
- **Preparatory services**
  - definition of, A-17
  - and the Displaced Homemakers Program, A-32-33
  - and the National Tech-Prep Education Program, 29, A-49
  - and the Sex Equity Program, A-33
  - and the Single Parent Program, A-32-33
  - and the Single Pregnant Women Program, A-32-33
  - and the State-Administered Tech-Prep Education Program, A-51
- **Preservice training, A-32, A-58, A-98-100**
- **Prior approvals, 33, 34, C-5, C-16**
- **Priority, definition of, 21-22**
- **Privacy issues, 14, B-25**
- **Private, definition of, A-14**
- **Private agencies/organizations, A-64, A-71, C-15**
- **Private industry councils, A-25, A-43, A-57**
- **Private postsecondary educational institutions, 24, A-32, A-34, A-51, A-52, B-18-21**
- **Private secondary schools**
  - and special populations, A-5, A-28
  - and state-administered programs, B-18-21
  - and the state plan, A-28

- and the State Vocational and Applied Technology Education Program, A-5

Private vocational training institutions
- and the Adult Vocational Education Program, A-34
- and Basic Programs, 24
- definition of, A-17
- and the Postsecondary Vocational Education Program, A-34
- and the Secondary Vocational Education Program, A-34
- and state-administered programs, B-18-21
- and the State Vocational and Applied Technology Education Program, A-32
- and the Vocational Education Lighthouse Schools Program, A-58

Privileges, D-7

Procurement, 32, C-19-25

Program, definition of, 21, 56

Program areas, definition of, 21, 56

Program changes, C-16

Program design, A-11

Program Effectiveness Panel
- and the Community Education Employment Centers Program, A-55, A-57
- and the Cooperative Demonstration Program, A-94, A-95
- definition of, A-17
- and the Demonstration Centers for the Training of Dislocated Workers, A-72
- and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-91
- and the Model Centers of Regional Training for Skilled Trades, A-89
- and the National Tech-Prep Education Program, A-49, A-50
- and reporting requirements, A-5
- representation on the, A-17
- and Vocational Education Dropout Prevention Program, A-87
- and the Vocational Education Lighthouse Schools Program, A-58-59

Program factors, A-11
- See also specific program

Program improvement, 10, 11, 19-20, A-24, A-25, A-44, A-47, A-52, A-53, A-61, A-104

Program improvement plan, A-3, A-6, A-44, A-47

Program income, C-12, C-14-15, C-17

Programs for Criminal Offenders, A-7, A-24, A-31, A-33, A-41-42, A-43

Program year, definition of, A-17

Project, definition of, 21, 56, A-14

Property, B-11, C-12, C-14, C-20, C-3

Proportionality, 50, D-7-8, D-11, D-12-14

Prorated allowances, 51

Public, definition of, A-14

Public information, B-8, B-14

R

Ratable reduction provision, A-42

Real property, B-16, C-5, C-13, C-16-17, C-29

Recipients
- and administrative costs, A-8, A-24
- and assessment/evaluation, A-3, A-6, A-7, A-24
- changes in role from previous act for, A-3
- and comparability requirements, A-24
- definition of, A-14, D-3
- eligibility of, A-16, A-24
- and equipment, A-25
- and program improvement, A-24
- reporting requirements for, A-19
- and special populations, A-24
- and the State Vocational and Applied Technology Education Program, A-8, A-24-25
- and supplanting funds, A-24
- See also Eligible recipients; Local recipients

Record, hearing on the, D-4, D-7

Records
- accessibility to, B-25
- access to, 41, C-15, C-25, C-29-30
- and after-the-grant requirements, C-31
- and allowable costs, 32
- and audits, 25, 41, 42, 43, 47-48, 49, B-25, C-15, C-29
- and compliance, B-25
- contemporaneous/constructed, 47-48, F-3
- and cost allocation plans, C-29
- and cost sharing/matching, C-12
- for equipment, 25, C-17-18, C-29
- financial, B-11, B-24-25, C-9
- of income after grant support period, C-29
- and indirect cost rate proposals, C-29
- microfilm of, C-29
- missing, 42
- performance, B-24-25
- and privacy, B-25
- and procurement, C-20, C-25
- real property, C-29
- reconstruction of, 42
- retention of, 49, B-25, C-25, C-28-29, C-31, E-6-7
- and state-administered programs, B-11, B-25
- student, B-25
- time distribution, 27-28, 32, F-3
- and use of funds, B-25

Recovery of funds, D-4, D-7-14

Redesignation Table, A-12

Refunds, and payments to grantees, C-10

Regional meetings
- and assessment/evaluation, A-102-5
- attendance at, A-4
- authorization for, A-3
- issues for discussion at, A-4, A-102-12
- and leadership activities, A-105-6
- notification about, A-4
- places/dates of, A-102
- and public involvement, A-3-4
- purpose of, A-3, A-102
- representation to, A-4
- and special populations, A-3-4, A-107, A-109-10
- and standards/performance measures, A-102-5
- and state administration, A-105-6
- and state leadership, A-105-6
- synthesis of comments from, A-102-12
- and use of funds, A-106-9

Regulator Flexibility Act Certification, A-11

Rehabilitation Act [1973], 14, 49, A-5, A-8, A-15, A-16, A-19, A-26, A-29, A-30, A-45, B-7

Rehabilitation facilities, A-15

Reimbursements, C-10, C-27, C-28

Relocation of business/enterprise, A-19

Remedial courses, 24, A-34, A-40

Renovation grants, A-9

Repayment of awards, A-77

Reporting requirements
- and after-the-grant requirements, C-31
- and construction projects, C-26
- and content of reports, C-26
- and contract provisions, C-24
- and due dates, C-27
- and extensions, C-26
- and fiscal requirements, B-24-25, C-9, C-26-28
- and frequency of reports, B-24-25, C-26, C-27
- as a general/major provision of the Act, 11, A-5
- and the GEPA, 13
- and number of copies, C-26
- overview of, A-110-12
- and the Paperwork Reduction Act [1980], A-12
- performance, C-25-26, C-31
- provisions governing, A-19
- and state-administered programs, B-11, B-24-25
- and the state plan, A-12
- and the State Vocational and Applied Technology Education Program, A-19
- and subgrantees, B-25
- waivers for, C-26, C-27
- See also Audits: and audit reports

Research
- and adequacy of resources, A-12
- and the Comprehensive Career Guidance and Counseling Program, A-39
- and the Consumer and Homemaking Education Program, A-38, A-39
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64-66
- and the Paperwork Reduction Act [1980], A-11, A-12
- See also National Center or Centers for Research in Vocational Education; Vocational Education Research Program

Reserving funds
- and the Adult Vocational Education Program, A-36, A-41
- and application reviews, A-41
- for Basic Programs, A-24, A-40-41
- for the Displaced Homemakers Program, 40-42
- and the Postsecondary Vocational Education Program, A-36
- for the Program for Criminal Offenders, A-41
- and the Secondary Vocational Education Program, A-34, A-41
- for the Sex Equity Program, A-40-41
- and the Single Parent Program, A-40-42
- and the Single Pregnant Women Program, A-40-42
- and State Leadership Activities, A-41
- and the state plan, A-41

Return of funds, A-76, A-77

Rights in data, C-25

Royalties, C-14

S

- **Satisfactory proficiency, definition of, A-75**
- **School facilities, definition of, 56**
- **Secondary schools**
  - and the Community Education Employment Centers Program, A-54
  - and comparability requirements, A-45
  - definition of, A-14
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and the Displaced Homemakers Program, A-33
  - and equipment, 24, 25
  - and Internships for Gifted and Talented Vocational Education Students Program, A-80-82
  - and the Sex Equity Program, A-33
  - and the Single Parent Program, A-33
  - and the Single Pregnant Women Program, A-33
  - and standards/performance measures, A-104
  - and the state plan, A-28
  - and the Vocational Education Lighthouse Schools Program, 12, A-57
  - and the Vocational Educator Training Fellowship Program, A-78
  - See also Articulation; Private secondary schools; Secondary Vocational Education Program
- **Secondary Vocational Education Program**
  - and administrative issues, A-8
  - and allocation/reallocation of funds, A-7-8, A-24, A-28, A-30, A-34-35, A-37
  - appeal procedures in the, A-24, A-36
  - assessment/evaluation of, A-3, A-6
  - as a Basic Program, A-31
  - and cooperative arrangements, A-35-36
  - eligibility for the, A-24, A-33
  - and the ESEA, A-34, A-35
  - and fiscal requirements, A-8
  - and IDEA, A-34, A-35
  - local recipients' requirements in the, A-43
  - minimum grant awards in the, A-7, A-35
  - priorities in the, A-34
  - reserving funds for, A-34, A-41
  - and the State Council on Vocational Education, A-27
  - and the state plan, A-28, A-34
  - and the State Vocational and Applied Technology Education Program, A-7-8
  - use of funds in the, A-24, A-33-34, A-43
  - waivers in the, A-24, A-35, A-37
- **Secretary, definition of, 56, A-14, D-3**
- **Section 235, definition of, 56**
  - See Basic Programs
- **Segregation of classes, and state-administered programs, B-19-20**
- **Selection criteria**
  - for construction projects, C-20
  - for discretionary programs, A-11
  - and the Paperwork Reduction Act [1980], A-11-12
  - and procurement, C-21
  - rationale for, A-11-12
  - and state-administered programs, B-26
  - and the state plan, A-30
  - See also specific program
- **Sequential course of study, A-69**
  - definition of, 56, A-17
- **Services**
  - and Basic Programs, 23
  - and costs, 35
  - definition of, 20
  - and income earned by contractors, C-12
  - and the National Tech-Prep Education Program, A-50
  - and Programs for Criminal Offenders, A-33
  - and the Secondary Vocational Education Program, A-35
  - and special populations, A-101-2, A-109
  - and the Tribally-Controlled Postsecondary Vocational Institutions Program, A-62
  - and use of funds, A-101-2, A-109
  - and the Vocational Education Lighthouse Schools Program, A-57
  - See also specific type of services
- **Set-asides, 9, 27, 28, 29, D-13, F-3**
- **Settlement negotiations, D-6**
- **Sex discrimination/stereotyping**
  - and assessment/evaluation, A-26
  - and Basic programs, 11
  - common questions asked about, 20-21
  - and the Consumer and Homemaking Education Program, A-26, A-38, A-94-95
  - and the Cooperative Demonstration Program, A-95
  - and the Displaced Homemakers Program, A-26
  - and distribution of funds, A-26
  - and information services, A-26
  - and the National Tech-Prep Education Program, A-49-50
  - and reserving funds, A-41
  - and the Single Parent Program, A-26
  - and the Single Pregnant Women Program, A-26
  - and special populations, 9
  - and the State Board for Vocational Education, A-26
  - and the state plan, A-26
  - and the State Vocational and Applied Technology Education Program, A-23, A-25-26
  - and technical assistance, A-26
  - and use of funds, A-26
  - and the Vocational Education Lighthouse Schools Program, A-58
  - See also specific program
- **Sex equity coordinator, 28, A-5, A-25-26**
- **Sex Equity Program, 12, 28, A-7, A-24, A-26, A-31, A-33, A-40-41, A-43**
- **Share, definition of, C-5**
- **Single Audit Act [1984], 15, 18, 39, C-15, E-3-7**
- **Single Parent Program**
  - allocations for the, 28, A-7
  - as a Basic Program, 11, 12, A-31
  - eligibility for the, A-24, A-32
  - reserving funds for the, 28, A-40-42
  - settings for the, A-24, A-33
  - and sex discrimination/stereotyping, A-26
  - and the state plan, A-28
  - use of funds in the, A-24, A-28, A-32-33
- **Single parents, 11, 12, A-17, A-62, A-90**
- **Single pregnant women, 11, 12, A-62, A-90**
- **Single Pregnant Women Program**
  - allocations for the, 28, A-7
  - as a Basic Program, 11, 12, A-31
  - eligibility for the, A-24, A-32
  - reserving funds for the, A-40-42
  - settings for the, A-24, A-33
  - and the state plan, A-28
  - use of funds in the, A-24, A-28, A-32-33
- **Site, definition of, 21, 56**
- **Skilled trades**
  - definition of, A-88
  - See also Model Centers of Regional Training for Skilled Trades
- **Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages and Computer Learning, B-15**
- **Small business, definition of, A-17**
- **Small entities, definition of, A-11**
- **Social Security Act, A-15, A-16, A-36, A-37, A-46**
- **Special Educational Needs of Children in Institutions for Neglected or Delinquent Children, B-14**
- **Specialized high school, definition of, A-15**
- **Special population coordinators, 24, A-34**
- **Special populations**
  - and the Adult Vocational Education Program, A-33, A-34
  - and area vocational education schools, A-48, A-102
  - and assessment/evaluation, A-44, A-47
  - and Basic Programs, 10, 19, 20, 21-24, A-109
  - and the Business-Labor-Education Partnership for Training Program, A-29
  - common questions asked about, 20-21
  - and the Cooperative Demonstration Program, A-92
  - courses for, A-6
  - definition of, 9, 20, 56, A-17
  - and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
  - and eligible recipients, A-109
  - employment opportunities for, A-6
  - and entitlements, A-6
  - and equal access, A-5-6
  - and equipment, 24
  - highest concentration of, 10, 11, 21-22, A-100
  - information services provided for, A-6
  - and intermediate educational agencies, A-102
  - and job placement, A-6
  - and limited English proficiency, A-17
  - and local educational agencies, A-6, A-48, A-100, A-102
  - and local recipients' requirements, A-43, A-44-45
  - monitoring for, A-6
  - and the National Center or Centers for Research in Vocational Education, A-66, A-67
  - and the negotiated rulemaking process, A-4, A-6, A-100-101
  - and postsecondary institutions, A-100
  - and the Postsecondary Vocational Education Program, A-33, A-34
  - as a priority of the Act, 9, 21-22, A-3, A-4, A-5-6, A-8, A-100, A-107
  - and private secondary schools, A-5, A-28
  - and program improvement, A-44, A-47

- and the regional meetings, A-3-4, A-107, A-109-10
- reporting requirements about, A-44-45
- and reserving funds, A-41
- and the Secondary Vocational Education Program, A-33, A-34
- and services, A-101-2, A-109
- and state-administered programs, A-106
- and the State-Administered Tech-Prep Education Program, 12, 29, A-51
- and the State Board for Vocational Education, A-5, A-28, A-47
- and the State Council on Vocational Education, A-27
- and the state plan, A-5, A-28, A-30, A-101
- state's responsibilities for, 9, 11, A-47
- and the State Vocational and Applied Technology Education Program, A-5-6, A-8, A-24, A-25, A-29, A-30, A-47
- and supplanting funds, A-110
- and technical assistance, A-47
- and the use of funds, A-8, A-100-101, A-107
- and the Vocational Education Dropout Prevention Program, A-86
- and the Vocational Education Research Program, A-63
- See also Equitable participation; Full participation; Individualized education programs; Supplementary services

Special Programs
- activities funded by, 12, A-37-47
- and administrative costs, A-43, A-45
- allocation of funds in, 12
- definition of, A-37
- eligibility for, A-24, A-37
- and the ESEA, 12
- overview of, 11, 12
- purpose of, A-24
- and technical assistance, A-43
- See also specific program

Specific job training, definition of, A-17

Sponsor, definition of, A-81

Spread, definition of, A-17

Staff development, A-39, A-54

Standardized achievement tests, A-15

Standards
- for accountability, A-5
- of conduct, C-19
- definition of, A-17
- for financial management systems, C-9-10
- generally accepted government auditing, 39, E-3
- for procurement, C-19
- for third party in-kind contributions, C-12
- See also Business and Education Standards Program

Standards/performance measures
- content of core, A-25, A-46
- deadline for implementation of the, 9-10
- development of, 9, 27
- and the IDEA, A-46
- and the JOBS, A-103
- and the JTPA, A-46, A-103
- and local recipients' requirements, A-44
- modification of the, A-44, A-103
- and negotiated rulemaking, A-100, A-101
- objections to, A-30
- and postsecondary institutions, A-104
- and program improvement, A-44
- and regional meetings, A-102-5
- and secondary schools, A-104
- and state-administered programs, 11, A-104
- and the State Board for Vocational Education, A-18, A-28, A-106
- and the State Committee of Practitioners, A-18-19, A-30, A-106
- and State Leadership Activities, A-32
- and the state plan, A-28, A-30
- state responsibility for, 9-10, 11, A-25, A-46
- and the State Vocational and Applied Technology Education Program, A-25, A-46
- and the use of funds, A-101
- and the Vocational Education Research Program, A-63
- and the Vocational Education Support Programs by Community-Based Organizations, A-38

State, definition of, A-17, A-26, A-27, C-5, E-3

State-administered programs
- activities funded by, 27-28, B-14
- and administrative issues, 27-28, B-11, B-17, B-18, B-20, B-23-24, B-26
- and the allocation/reallocation of funds, 27-28, B-5, B-6, B-9-10, B-12, B-13, B-14
- and allowable costs, A-105, B-16-17
- and amendments, B-12-13, B-14
- and appeals, A-106
- applications for, B-14-16, B-19, B-26, B-28
- applying for, B-6-13
- and assessment/evaluation, 27, 28, B-11, B-17-18, B-26
- and audits, B-27, B-28
- as Basic programs, A-31
- and by-pass provisions, B-18, B-20-21, B-22
- and comparability, B-19
- and competitive grants, 28
- and complaint procedures, B-26-27
- and compliance, B-23, B-25, B-27-28
- conditions for, B-16-23
- and consolidated grants, B-8-12
- and construction projects, B-16, B-18, B-20
- and cost sharing/matching, B-11, B-12, B-16, B-25-26
- and the dissemination of information, B-26
- and the Educational Appeal Board, B-27
- eligibility for, B-5-6, B-10
- and eligible applicants, B-26
- and equipment, B-16, B-20, C-17
- and equitable participation, B-18
- and equity programs, 28
- and the ESEA, B-26
- and facilities, B-16, B-22, B-28
- and fiscal requirements, B-11, B-12, B-14, B-22, B-23-25
- and formula awards, 28, B-5, B-14
- and the GEPA, B-5, B-6, B-7, B-13, B-16, B-24, B-25, B-27
- and hearings, B-13, B-14-16, B-21-22, B-27
- and indirect cost rates, B-17
- and insular areas, B-8-12
- and joint applications/projects, B-14
- and local educational agencies, B-6, B-13, B-14, B-17, B-28-29
- and non-discrimination, B-16
- and notification of awards, B-13-14
- overview of, B-3-5
- and privacy issues, B-25
- and private schools, B-18-21
- and property, B-11
- and public information, B-14
- and records, B-11, B-25
- regulations applying to, A-14, B-5, B-9
- and reporting requirements, B-11, B-24-25
- reserving funds for, A-41
- and Secretarial approval/disapproval, B-13
- and segregation of classes, B-19-20
- and selection criteria, 28, B-26
- and special populations, A-106
- and standards/performance measures, A-104
- state applications for, B-6-8
- and the State Board for Vocational Education, A-106
- and the State plan, B-6-8, B-11, B-12, B-13, B-21, B-26
- state responsibilities for, B-18, B-26
- and subgrantees, B-5-6, B-13-16, B-18, B-21, B-25, B-26
- and supplanting funds, B-11, B-17
- and supplies, B-20
- and technical assistance, 28, A-105, B-11, B-26
- and time distribution, 27-28
- and tuition/fees, B-16
- and use of funds, 27-28, A-24, A-32, B-12, B-14, B-16, B-17, B-25-26
- and waivers, B-12, B-20-21, B-27

State-Administered Tech-Prep Education Program, 11, 12, A-9, A-11, A-14, A-50-52

State administration
- cost requirements for, 12, A-43
- and cost-sharing requirements, A-42
- and regional meetings, A-105-6
- and reserving funds, A-41-42

State agencies
- and the Bilingual Vocational Instructor Training Program, A-98
- and the Bilingual Vocational Training Program, A-96
- and the Business-Labor-Education Partnership for Training Program, A-40
- hearings by, B-14-16, B-27
- and Internships for Gifted and Talented Vocational Education Students Program, A-80, A-81
- and regional meetings, A-4

State aid, A-19

State Board for Vocational Education
- and accountability, A-28
- and administrative costs, A-8-9
- administrative provisions for the, A-31
- and appeals, A-36, A-106
- and assessment/evaluation, A-25, A-29, A-46-47
- and the Bilingual Vocational Instructor Training Program, A-99
- and the Bilingual Vocational Training Program, A-96-97
- and the Business-Labor-Education Partnership for Training Program, A-24, A-29, A-39-40
- and career guidance and counseling, A-5, A-29
- and the Consumer and Homemaking Education Program, A-39
- definition of the, A-17, A-25
- and the Demonstration Projects for the Integration of Vocational and Academic Learning, A-90
- and the Indian Vocational Education Program, A-21
- and the JTPA, A-25
- and local recipients' requirements for receiving a subgrant/contract, A-43
- and the Native Hawaiian Vocational Education Program, A-23
- and the occupational information coordinating committee, A-47
- and Programs for Criminal Offenders, A-33

- responsibilities of the, 9, 11, A-23, A-25, A-28-30, A-106
- and sex discrimination/stereotyping, A-26
- and special populations, A-5, A-26, A-47
- and standards/performance measures, A-18, A-28, A-106
- and the State-Administered Tech-Prep Education Program, A-9
- and the State Committee of Practitioners, A-106
- and the State Council on Vocational Education, A-25, A-27, A-28
- and the State Vocational and Applied Technology Education Program, A-23, A-25, A-32
- and supplanting funds, A-47
- and the Vocational Education Support Programs by Community-Based Organizations, A-38
- See also state plan

State Committee of Practitioners
- appointment of the, A-4-5, A-18, A-46
- authorization for a, A-4-5
- function/purpose of the, A-4, A-5, A-46
- representation on the, A-18
- requirements for establishing a, A-18
- and standards/performance measures, 9, A-18-19, A-30, A-46, A-106
- and the State Board for Vocational Education, A-106
- and the state plan, A-30, A-31

State Council on Vocational Education
- appointment of the, A-27
- and assessment/evaluation, A-27, A-28
- and availability of vocational education, A-27
- and the Community Education Employment Centers Program, A-57
- and corrections education programs, A-27
- definition of, A-18
- and the disabled, A-27
- and distribution of funds, A-27
- financial agency for the, A-28
- funding of the, A-28
- and the job training coordinating council, A-28
- and the JTPA, A-27
- membership requirements for the, A-24
- and the Postsecondary Vocational Education Program, A-27
- and the private sector, A-27
- and the public sector, A-27
- representation on the, A-27
- responsibilities of the, 9, 11, A-24, A-27-28
- and secondary vocational educational programs, A-27
- and the Secondary Vocational Education Program, A-27
- and special populations, A-27
- and the State Board for Vocational Education, A-25, A-27, A-28
- and the State Plan, A-5, A-25, A-27, A-28, A-30, A-31
- and the State Vocational and Applied Technology Education Program, A-5, A-24
- and the Supplementary State Grants Program, A-53
- support staff for the, A-28
- and the Vocational Education Research Program, A-62
- See also specific program

State educational agencies
- and the Cooperative Demonstration Program, A-92
- definition of, 56, A-14
- and the Demonstration Centers for the Training of Dislocated Workers, A-72
- hearings by, B-15, B-27
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64
- and Special Programs, 12
- and the Vocational Education Training and Study Grants Program, A-73, A-74

State formula grant program, definition of, B-5

State leadership activities
- as a Basic Program, 11, 12, A-24, A-31, A-32, A-38, A-39, A-41
- definition of, A-39
- See also Leadership activities

State Liaison Representative [SLR], A-66

State-operated Programs for Handicapped Children, B-15

State plan
- administration of the, A-41, A-42
- and adult education, A-28
- and the Adult Vocational Education Program, A-28, A-34
- amendments to the, A-24, A-30, A-31, B-12, C-8
- approval of the, A-24, A-31
- and assessment/evaluation, 9, A-6, A-28, A-30, A-47
- and the Business-Labor-Education Partnership for Training Program, A-39-40
- and career guidance and counseling, A-5
- certifications in, B-7-8
- and comparability requirements, A-8, A-45
- and the Comprehensive Career Guidance and Counseling Program, A-39
- consultations concerning the, A-30
- and the Consumer and Homemaking Education Program, A-38
- content of the, A-5, A-24, A-28-30
- and cost-sharing requirements, A-42
- and curriculum development, A-28
- definition of, B-6-7
- development of the, 9, 11, A-28
- and the Displaced Homemakers Program, A-28
- and distribution of funds, A-28, A-30
- and eligible recipients, A-28
- and the ESEA, B-6, B-7
- and fiscal requirements, A-8
- and the GEPA, B-7
- goals of the, A-30
- hearings about the, A-31, B-13
- and the job training coordinating council, A-30, A-31
- and joint planning/coordination, A-30
- and local educational agencies, A-30
- mandate for a, A-5
- objections to the, A-28
- and the Paperwork Reduction Act [1980], A-12
- and postsecondary education, A-28
- and the Postsecondary Vocational Education Program, A-28, A-34
- and private secondary schools, A-28
- progress reports about the, A-30
- and public information, B-8
- public notices about the, A-28, A-30
- and regulatory/statutory requirements, B-13
- and reporting requirements, A-12
- reserving funds for administration of the, A-41
- review of the, A-5, A-9, A-30
- and secondary schools, A-28
- and the Secondary Vocational Education Program, A-28, A-34
- and selection criteria, A-30
- and sex discrimination/stereotyping, A-26
- and the Single Parent Program, A-28
- and the Single Pregnant Women Program, A-28
- and special populations, A-5, A-28, A-30, A-101
- and standards/performance measures, A-28, A-30
- and state-administered programs, B-6-8, B-11, B-12, B-13, B-21, B-26
- and the State-Administered Tech-Prep Education Program, A-9
- and the State Board for Vocational Education, A-5, A-9
- and the State Committee of Practitioners, A-30, A-31
- and the State Council on Vocational Education, A-5, A-25, A-27, A-28, A-30, A-31
- and the state needs, A-28
- and the State Vocational and Applied Technology Education Program, A-8, A-24, A-28, A-30, A-31
- submission of the, A-24, A-25, A-30, A-47
- and the Supplementary State Grants Program, A-9, A-30
- and tech-prep education, A-28
- three-year, 9, B-7
- and the Uniform Administrative Act, C-8
- and use of funds, A-28, A-30, A-101
- and the Vocational Education Support Programs by Community-Based Organizations, A-38
- See also specific program

State Vocational and Applied Technology Education Program
- and administrative responsibilities, A-8-9, A-24, A-25, A-31, A-46-47
- and allocations/reallocations of funds, A-7-8, A-24, A-30, A-31, A-32
- and assessment/evaluation, A-5, A-6-7, A-24, A-25, A-29, A-30, A-46-47
- and Carl D. Perkins Vocational Education Act, A-29
- definitions applying to the, A-23, A-25, A-26, A-27
- and the Elementary and Secondary Education Act, A-23, A-26
- eligibility for the, A-23, A-24, A-25
- and fiscal requirements, A-8-9, A-24, A-29
- and flexibility, A-8
- general provisions for the, A-13
- and IDEA, A-26, A-29, A-30
- implementation of the, A-24, A-32
- and JTPA, A-28, A-30
- as a major provision in the Act, A-5-9
- and minimum grants, A-7
- and the National Centers for Research in Vocational Education, A-25
- and the negotiated rulemaking process, A-8
- and the occupation information coordinating committee, A-25, A-47
- overview of, A-23-25
- and public hearings, A-5
- purpose of the, A-13, A-23, A-25
- and recipients, A-8, A-24-25
- regulations applying to the, A-14, A-23, A-25
- and Regulator Flexibility Act Certification, A-11
- and the Rehabilitation Act, A-26, A-29, A-30
- reporting requirements for the, A-19
- requirements applying to the, A-19

- and the Secondary Vocational Education Program, A-7-8
- and selection criteria, A-30
- state application process for the, A-24, A-28-30
- and the State Board for Vocational Education, A-23, A-25, A-32
- and the State Council on Vocational Education, A-5, A-24
- and the state plan, A-8, A-24, A-28, A-30, A-31
- state requirements for the, A-5
- state's responsibilities for the, A-5, A-6-7, A-23-24, A-25-28
- and use of funds, A-8
- and waivers, A-7-8, A-24, A-30
- and within-state allocation, A-7
- See also specific sub-program

Statute of limitations, 49, F-5

Statutory formulas.
- See Funding formulas

Stipends
- definition of, A-20, A-73
- and the Indian Vocational Education Program, A-5, A-20
- for Internships for Gifted and Talented Vocational Education Students Program, A-81
- provisions governing, A-19

Strengthening Instruction in Academic Subjects in Public Schools, B-15

Student assistance.
- See Stipends

Student organizations, 11, 27, 28, A-18, A-32, A-38, A-73, A-74, A-75

Study grants.
- See Vocational Education Training and Study Grants Program

Subgrantees
- and audits, C-15, E-5
- changes in, C-16
- definition of, A-14, C-5
- and hearings, B-14-16
- and reporting requirements, B-25
- responsibilities of, B-14
- and state-administered programs, B-5-6, B-13-16, B-18, B-21, B-25, B-26
- states as, B-18

Subgrants
- applying for, B-13-14
- definition of, A-14, C-5
- and Indian tribal government, C-25
- making awards for, B-14-16
- state's responsibilities for, C-25
- and the Uniform Administrative Act, C-8-9, C-25

Subrecipients
- and audits, 40
- definition of, E-3

Supplanting funds
- and audits, 8, 40, 48-49
- and [illegible], 48
- and the [illegible], 49
- as a general provision, 11
- and hearings for the recovery of funds, D-13-14
- and IDEA, A-45
- and indirect cost rates, B-17
- and joint funding, A-18
- and local recipients' requirements, A-45
- and regional meetings, A-110
- and the Rehabilitation Act, A-45
- and special populations, A-110
- and state-administered programs, B-11, B-17
- and the State Board for Vocational Education, A-47
- state's responsibilities for, A-47
- and the State Vocational and Applied Technology Education Program, A-8, A-24, A-25, A-29, A-47
- and use of funds, A-110

Supplementary Centers and Services, Guidance, Counseling, and Testing Programs, B-15

Supplementary services
- and the Adult Vocational Education Program, A-33, A-34
- and Basic Programs, 20, 23, 24
- definition of, 20, 56, A-18
- funding for, 20-21
- and local recipients' requirements, A-44
- and negotiated rulemaking, A-100
- and the Postsecondary Vocational Education Program, A-33, A-34
- and program improvement, A-44, A-47
- and the Secondary Vocational Education Program, A-33, A-34
- and use of funds, A-100

Supplementary State Grants Program
- activities funded by the, A-52
- and administrative issues, A-53
- allocations/reallocations in the, A-53
- applications to the state for the, A-53
- and assessment/evaluation, A-53
- and audits, A-53
- definitions applying to the, A-53
- and designation of responsible state agency, A-53
- eligibility for the, A-9, A-37, A-52, A-53
- and the ESEA, A-53
- and funding formulas, A-9
- grant period for the, A-53
- overview of, A-52
- purpose of the, A-9, A-52
- regulations applying to the, A-14, A-52
- and Regulator Flexibility Act Certification, A-11
- as a special program, 11, A-37
- state applications for the, A-53
- and the State Council on Vocational Education, A-53
- and the state plan, A-9, A-30
- use of funds in the, A-43, A-53

Supplies, A-14, B-20, C-5, C-13, C-18-19

Support services
- and the Community Education Employment Centers Program, 12, A-9, A-54, A-55, A-56
- and the Consumer and Homemaking Education Program, A-38-39
- and the Cooperative Demonstration Program, A-93
- and the Demonstration Centers for the Training of Dislocated Workers, A-71
- and the Displaced Homemakers Program, A-33
- and the Educational Program for Federal Correctional Institutions, A-84
- and local recipients' requirements, A-43
- and the Sex Equity Program, A-33
- and the Single Parent Program, A-33
- and the Single Pregnant Women Program, A-33
- and the Vocational Education Dropout Prevention Program, A-86
- and the Vocational Education Leadership Development Awards Program, A-75
- and the Vocational Educator Training Fellowship Program, A-78

Suspension, 7, 40, C-5, C-19, C-30, E-7

T

Teacher education
- and the Adult Vocational Education Program, A-34
- and Basic Programs, 24
- and the Consumer and Homemaking Education Program, A-38
- and the Materials Development in Telecommunications Program, A-69, A-70
- and the National Center or Centers for Research in Vocational Education, A-66
- and the Postsecondary Vocational Education Program, A-34
- and the Secondary Vocational Education Program, A-34
- and the State Vocational and Applied Technology Education Program, A-31
- and the Supplementary State Grants Program, A-53

Technical assistance
- and the Adult Vocational Education Program, A-43
- and assessment/evaluation, A-47
- and audits, E-5
- and Basic Programs, A-43
- and the Community Education Employment Centers Program, A-54
- and the Consumer and Homemaking Education Program, A-39
- definition of, A-105
- and fiscal requirements, A-8, A-9
- and the General Education Provisions Act, 14
- and the Model Centers of Regional Training for Skilled Trades, A-10, A-87-89
- and the National Center or Centers for Research in Vocational Education, A-67
- and the National Network for Curriculum Coordination in Vocational and Technical Education, A-64, A-65, A-66
- and "necessary and reasonable" cost, A-9
- and the Postsecondary Vocational Education Program, A-43
- and program improvement, A-47
- and reserving funds, A-41
- and the Secondary Vocational Education Program, A-43
- and sex discrimination/stereotyping, A-26
- and special populations, A-47
- and state-administered programs, 28, A-105, B-11, B-26
- and the State-Administered Tech-Prep Education Program, A-9, A-51, A-52
- state provision of, A-43
- and the State Vocational and Applied Technology Education Program, A-8, A-24
- and the Supplementary State Grants Program, A-43
- use of funds for, A-9, A-43
- and the Vocational Education Lighthouse Schools Program, A-58

Technical committees, A-10, A-25, A-41

Technical institute, definition of, A-15

Technology education
- and Basic Programs, 11
- and the Business-Labor-Education Partnership for Training Program, A-29, A-40

and the Comprehensive Career Guidance and Counseling Program, A-39
definition of, A-18
and state-administered programs, 28
Tech-prep, definition of, 56, A-51
Tech-prep education, 11, 12, 24, 27, 29, A-28, A-32, A-34.
See also National Tech-Prep Education Program; State-Administered Tech-Prep Education Program
Tech-prep educational clearinghouse, A-65
Telecommunications. See Materials Development in Telecommunications Program
Termination
of awards, A-76-77, C-30
definition of, C-5-6
Terms of a grant or subgrant, definition of, C-6
Third-party evaluation, A-11
Third party in-kind contributions, C-6, C-12
Time distribution, 27-28, 32, 47-48, F-3
Training programs, A-11
See also specific type of training or program
Transportability, definition of, A-18
Tribal governments, as community-based organizations, A-15
Tribally-Controlled Community College Assistance Act [1978], A-18, A-52
Tribally-controlled community colleges, A-52, A-60
Tribally-Controlled postsecondary vocational institution, definition of, A-9, A-60
Tribally-Controlled Postsecondary Vocational Institutions Program, 11, 12, A-9, A-14, A-59-62, A-111
Tribally-Controlled Schools Act [1986], A-20
Tribal organization, definition of, A-20
Tuition/fees, A-19, B-16

U

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
additions and exceptions to the, C-7
and after-the-grant requirements, C-31
applicability of the, C-6-7
as a basic regulatory guideline, 14-15, 17
and budget changes, C-15-16
definitions applying to the, C-3-6
and effect on other issuances, C-7
and enforcement, C-30
and the ESEA, C-6
and financial administration, C-9-15
and the General Education Provisions Act, C-29
general information about the, 14-15, 17, C-3-7
and "high-risk" grantees, C-8-9
and the JTPA, C-6
and the Paperwork Reduction Act, C-7, C-8
and post-award requirements, C-9-30
and pre-award requirements, C-7-9
and procurement, C-19-25
purpose/scope of the, C-3
and records, C-28-30
and reporting requirements, C-9, C-25-28
and special grant/subgrantee conditions, C-8-9
and the state plan, C-8
University, department of a, A-15
Unliquidated obligations, definition of, C-6
Unobligated balance, definition of, C-6
Use of funds
and administrative costs, A-8-9
and area vocational education schools, A-102, A-109
and assessment/evaluation, A-101
and Basic Programs, A-109
and coherent sequences of courses, A-101
and comparability requirements, A-108
and corrections educational agencies, A-30
and cost sharing/matching, B-25-26
and eligible recipients, A-109
and equitable/full participation, A-8, A-100-101, A-107
and flexibility, A-8
and hearings for the recovery of funds, D-7-14
and integration of vocational/academic courses, A-8, A-101
and intermediate educational agencies, A-102, A-109
limitations on, C-11
and local educational agencies, A-102
and local recipients' requirements, A-43, A-45
and the negotiated rulemaking process, A-4, A-8, A-100-101
and noncompliance, C-30
and records, B-25
and regional meetings, 106-9
and services, A-101-2, A-109
and sex discrimination/stereotyping, A-26
and special populations, A-8, A-100-101, A-107
and standards/performance measures, A-101
and state-administered programs, 27-28, B-12, B-14, B-16, B-17, B-25-26
and the state plan, A-28, A-30, A-101
and supplanting funds, A-110
and supplementary services, A-100
and technical assistance, A-9
See also specific program
User fees, C-17

V

Valuation of services, C-12-13
Value engineering clauses, C-20
Vocational assessment and testing, as preparatory services, A-17
Vocational education
definition of, 22-23, 56, A-18
state directors of, A-4, A-65, A-66, A-80-82, A-110
Vocational Education Act, B-6, B-7
Vocational education associations, A-73, A-74, A-80, A-81
Vocational Education Curriculum Materials [VECM], A-65
Vocational Education Dropout Prevention Program, A-10, A-14, A-85-87, A-110
Vocational Education Leadership Development Awards Program, A-10, A-14, A-74-77, A-111-12
Vocational Education Lighthouse Schools Program, 11, 12, A-9, A-14, A-57-59, A-110
Vocational Education Research Program, A-9, A-14, A-62-64
Vocational Education Support Programs by Community-Based Organizations, A-24, A-37, A-38, A-43
Vocational education system, and job training system, A-27-28
Vocational Education Training and Study Grants Program, A-10, A-14, A-72-74, A-111
Vocational Educator Training Fellowship Program, A-10, A-11, A-14, A-77-80, A-112
Vocational rehabilitation organizations, A-15
Vocational schools
definition of, A-15
and the Vocational Educator Training Fellowship Program, A-78
See also Private vocational training institutions
Volunteer services, C-12-13

W

Wagner-Peyser Act, A-18
Waivers, 34, 45, 50, A-7-8, A-42, B-12, B-20-21, B-27
See also specific program
Withholding hearings, B-27, D-4
Withholding payments, 7, 40, C-10, C-30, E-7
Within-state allocation, A-7
Work Incentive Program [WIN], C-6
Working capital advances, C-10
Work-study programs, A-5, A-20, A-31

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